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TRANSCRIPT OF RECORD

United States Court Of Appeals

TENTH CIRCUIT

VOLUME I

No. 5524

JOHN C. ARP and MILDRED K. ARP,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

Appeal From The United States District Court
For The District Of Wyoming

Filed November 27, 1956.

United States Court Of Appeals

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

Pleas And Proceedings before the Honorable A. Sherman Christenson, Judge of the United States District Court for the District of Utah, assigned to the United States District Court for the District of Wyoming, presiding in the following entitled cause:

UNITED STATES OF AMERICA, Petitioner
for Condemnation,

vs.

CERTAIN PARCELS OF LAND in the City of Cheyenne, Laramie County, State of Wyoming, JOHN C. ARP and MILDRED K. ARP, THE CHILDREN'S HOSPITAL ASSOCIATION, a Colorado Corporation, THE CITY OF CHEYENNE, WYOMING, the COUNTY OF LARAMIE, WYOMING, and unknown owners, Defendants.

No. 2901, Civil.

1] Petition For Condemnation.

To The Honorable, The Judge Of The United States District Court, For The District Of Wyoming:

The United States of America by Carl L. Sackett, United States Attorney for the District of Wyoming, and John C. Pickett, Assistant United States Attorney for the District of Wyoming, acting under instructions of the Attorney General and at the request of the Acting Commissioner of the Federal Public Housing Authority of the United States, respectfully shows as follows:

1. In furtherance of the Act of Congress of August 1, 1888, 25 Stat. 357 (U. S. C. Title 40, Sec. 257); the Act of February 26, 1931, 46 Stat. 1421 (U. S. C. Title 40, Secs. 258 (a) to 258 (e)); the Act of October 14, 1940 (Public No. 849, 76th Congress), as amended, and Executive Order No. 9070,

dated February 24, 1942, the Second War Powers Act (Public Law No. 507, 77th Congress), and Executive Order No. 9150, dated April 28, 1942, which acts authorize the acquisition of land for the establishment of sites for the housing of persons engaged in national defense activities, and their families, and the Act of Congress approved October 14, 1940 (Public Law No. 106, 76th Congress) which act appropriated funds for such purposes, the Acting Commissioner of the Federal Public Housing Authority has been and is authorized to acquire the lands hereinafter described.

2] 2. The Acting Commissioner of the Federal Public Housing Authority of the United States of America has selected for acquisition by the United States the lands hereinafter described for the purpose of providing housing for persons engaged in defense activities, and their families, and in the opinion of the Acting Commissioner of the Federal Public Housing Authority of the United States it is necessarily advantageous and in the interests of the United States that said lands be acquired by judicial proceedings as authorized by the Act of Congress approved August 1, 1888 (25 Stat. 357; 40 U. S. C. A. 257, 258).

3. The lands sought to be acquired in this proceeding are described as follows:

All that tract or parcel of land lying and being in the Southwest Corner of Section 6, Township 13 North, Range 66 West, 6th Principal Meridian, in the City of Cheyenne, Laramie County, Wyoming, and more particularly described as follows:

Beginning at the Southwest Corner of Section 6; thence North 58° 35' 15" East 2042.75 feet to the true point of beginning; thence North 0° 07' West 300 feet to an iron pipe; thence South 89° 53' West 380.44 feet to an iron pipe; thence North 0° 31' West 900 feet to an iron pipe; thence South 83° 32' East 1310.65 feet to an iron pin; thence South 0° 07' East 1050 feet to an iron pin; thence South 89° 53' West 915 feet to the true point of beginning, containing 30.89 acres of land, more or less;

Together with the streets and alleys within said site. That the value of the interest in the said lands, together

with all improvements thereon, does not exceed the sum of Two Dollars, and the owners thereof have agreed to accept said sum in full payment therefor.

4. The estate taken for said public use is the exclusive use for a period of one year, with the right to renew from year to year for the duration of the war emergency as determined by the President, and one year thereafter, together with all improvements thereon; with the right in the Government to demolish any and all improvements; and with the right in the Government at the termination of such period to remove any or all improvements placed thereon by said Government.

5. The apparent owners of said lands are the defendants, Maude B. Van Tassell and City of Cheyenne, a municipal corporation. All unknown owners, lienors and claimants having or claiming any right, title, estate, equity,
3] interest or lien, and all occupants, lessees, licensees and users of and claimants to easements in or over, across or through said lands, and all persons, companies and corporations claiming any title or interest to or in said tract of land herein described, are made parties defendant to the end that they may come into court and by proper pleadings make claim to said lands or to the proceeds arising therefrom.

Wherefore your petitioner prays that this court take jurisdiction of this cause and make and have entered all such orders, judgments and decrees as may be necessary to bring all of the known owners of and those claiming any interest in said lands into court, and to make all unknown parties having any interest therein parties defendant hereto, and to fix the value for the taking of said lands, and to fix the amount of compensation to be paid for such taking, and all such other orders, judgments and decrees as may be necessary to vest in the United States the exclusive use of said lands for a period of one year, with the right to renew from year to year for the duration of the war emergency as determined by the President, and for one year thereafter, together with all improvements thereon; with the right in the petitioner to demolish any and all improvements, and with the right in the petitioner at the termination of such period to remove any or all improvements placed thereon by the

petitioner, and for such other orders and decrees as the court may deem proper in the premises.

United States Of America
By Carl L. Sackett
United States Attorney for the District of Wyoming
By John C. Pickett
Assistant United States Attorney for the District of Wyoming
Attorneys for Petitioner

[Verified.]
Filed Oct. 21, 1943.

5] Declaration Of Taking.

I, R. L. Cochran, Acting Commissioner of the Federal Public Housing Authority of the United States of America, do hereby declare that:

1. (a) The lands described in Schedule A attached, are hereby taken for the use of the United States under the authority of the Act of August 1, 1888, 25 Stat. 357 (U.S.C. Title 40, Sec. 257); the Act of February 26, 1931, 46 Stat. 1421 (U.S.C. Title 40, Secs. 258 (a) to 258 (e)); the Act of October 14, 1940 (Public No. 849, 76th Congress), as amended, and Executive Order No. 9070, dated February 24, 1942, funds having been appropriated by Public Resolution 106 (76th Congress, approved October 14, 1940) and Acts supplementary thereto and amendatory thereof. (b) The public use for which said lands are taken is the provision of housing pursuant to said Act of October 14, 1940.

2. A description of said lands sufficient for the identification thereof is set forth in Schedule A, annexed, and made a part hereof.

3. The estate taken for said public use is the exclusive use for a period of one year, with the right to renew from year to year for the duration of the war emergency as determined by the President, and one year thereafter, together with all improvements thereon; with the right in the Government

to demolish any and all improvements; and with the right in the Government at the termination of such period to remove any or all improvements placed thereon by said Government.

6] 4. A plan showing said lands is annexed, as Schedule B, and made a part hereof.

5. The sum of money estimated by me to be just compensation for the exclusive use of said lands including all buildings and improvements thereon for a period of one year, is set forth in Schedule A annexed hereto and made a part hereof. Said sum I herewith deposit in the registry of this Court to the use of the persons entitled thereto.

I am of the opinion that the ultimate award of compensation for the exclusive use of said lands will be within any limits prescribed by law to be paid as the price therefor.

In Witness Whereof, I, R. L. Cochran, Acting Commissioner of Federal Public Housing Authority, thereunto duly authorized have signed this Declaration of Taking, acting as Acting Commissioner of Federal Public Housing Authority, this 14th day of October, 1943, in the City of Washington, District of Columbia.

United States Of America
By R. L. Cochran
Acting Federal Public Housing
Commissioner

Filed Oct. 21, 1943.

7] Schedule "A"

[The description of land which follows is set out in paragraph 3 of the petition for condemnation which appears at page 2 .]

Purported owner Maude B. Van Tassell

Estimated value for the exclusive use for one year, together with the rights set forth in the Declaration of Taking is $1.00

Streets And Alleys within said site Purported owner, City of Cheyenne Estimated value for the exclusive use for one year, together with the rights set forth in the Declaration of

Taking is $2.00

The total sum of money estimated by me to be just compensation for the exclusive use for one year, of the aforesaid lands in this proceeding, and hereby taken is $2.00

[Schedule B is a plat showing lands referred to in the declaration of taking. Three copies of the plat have been filed.]

9] Supplemental Declaration Of Taking.

The Declaration of Taking previously filed in this cause provided for the right in the Government to renew the estate taken from year to year for the duration of the War Emergency as determined by the President, and one year thereafter. However, I now find that the best interests of the Government will be served by extending the renewal period to three years after the termination of the National Emergency.

Now, I, Herbert Emmerich, Commissioner of the Federal Public Housing Authority of the United States of America, do hereby declare that.

[The language which follows is identical with that of numbered paragraphs 1 and 2 of the declaration of taking which appears at page 4 .]

3. The estate taken for said public use is the exclusive use for a period of one year, with the right to renew from year to year for the duration of the war emergency as determined by the President, and three years thereafter, together with all improvements thereon; with the right in the Government to demolish any and all improvements, if any; and with the right in the Government at the termination of such period to remove any or all improvements placed thereon by said Government.

10] 4. A plan showing said lands is annexed, as Schedule B, and made a part hereof.

5. The sum of money estimated by me to be just compensation for the exclusive use of said lands including all buildings and improvements thereon for a period of one

year, is set forth in Schedule A annexed hereto and made a part hereof. Said sum was previously deposited in the registry of this Court to the use of the persons entitled thereto.

I am of the opinion that the ultimate award of compensation for the exclusive use of said lands will be within any limits prescribed by law to be paid as the price therefor.

In Witness Whereof, I, Herbert Emmerich, Commissioner of Federal Public Housing Authority, thereunto duly authorized have signed this Supplemental Declaration of Taking, acting as Commissioner of Federal Public Housing Authority, this 26th day of November, 1943, in the City of Washington, District of Columbia.

United States Of America
By Herbert Emmerich
Federal Public Housing
Commissioner

Filed Dec. 22, 1943.

[The schedules attached to the supplemental declaration of taking are identical with those attached to the declaration of taking which appear at pages 5 and 6.]

13] Judgment On Declaration Of Taking And On Supplemental Declaration Of Taking.

The above matter came on regularly this day to be heard upon motion of the petitioner herein, the United States of America, to enter judgment on the declaration of taking filed on the 21st day of October, 1943, and on the supplemental declaration of taking filed on the 22nd day of December, 1943, and for an order fixing the date when possession of the property herein described is to be surrendered to the petitioner; and the court having considered said motion, petition, declaration of taking and supplemental declaration of taking, and the statutes in such cases made and provided, and it appearing to the satisfaction of the court:

First, that the United States of America is entitled to acquire property by eminent domain for the purposes set out and prayed for in its petition filed herein;

Second, that said petition in condemnation was filed at the request of the Acting Commissioner of the Federal Public Housing Authority of the United States, who is empowered by law to acquire the lands described in said petition;

Third, that said petition and declaration of taking and supplemental declaration of taking state the authority under which and the public use for which said lands
14] were taken; that Herbert Emmerich, Commissioner of the Federal Public Housing Authority of the United States, and R. L. Cochran, Acting Commissioner of the Public Housing Authority of the United States, are the persons duly authorized and empowered by law to acquire lands such as are described in the petition filed herein for the establishment of sites for the housing of persons engaged in national defense activities, and their families;

Fourth, that a proper description of the lands sought to be taken is set out in said declaration of taking and supplemental declaration of taking;

Fifth, that said declaration of taking and supplemental declaration of taking contain a statement of the estate or interest in said lands taken for public use;

Sixth, that a plat showing the lands taken is incorporated in said declaration of taking and supplemental declaration of taking;

Seventh, that a statement is contained in said declaration of taking and the supplemental declaration of taking of the sum of money estimated by the acquiring authority to be just compensation for said lands and all of the same in the sum of Two Dollars ($2.00), and said sum has been deposited in the registry of this court for the use of the persons entitled thereto at the time of the filing of said declaration of taking;

Eighth, that a statement is contained in said declaration

of taking and supplemental declaration of taking that the amount of the ultimate award of compensation for the taking of said property, in the opinion of Herbert Emmerich, Commissioner of the Federal Public Housing Authority of the United States, and R. L. Cochran, Acting Commissioner of the Federal Public Housing Authority of the United States, will be within any limit prescribed by Congress as to the price to be paid therefor:

It Is, Therefore, Ordered, Adjudged And Decreed that the exclusive use for a period of one year, with the right to renew from year to year for the duration of the war emergency as determined by the President, and three years thereafter, together with all improvements thereon, with the right of the Government to demolish any and all improvements thereon, if any, and with the right of the Government, at the termination of such period, to remove any and all improvements placed thereon by said Government, of the premises described as:

15] [The description of land which follows is set out in paragraph 3 of the petition for condemnation which appears at page 2 .]

Streets And Alleys within said site; is hereby vested in the United States of America, and the use of said lands is hereby deemed to have been condemned and taken for the United States of America, and the right to just compensation for said property taken is hereby vested in the persons entitled thereto, and the amount of such compensation shall be ascertained and awarded in this proceeding and established by judgment pursuant to law.

It Is Further Ordered, Adjudged And Decreed that the possession of the above entitled property shall be delivered to the United States of America on or before the 22 day of December, 1943, and this cause shall remain open for such other and further orders, judgments and decrees as may be necessary in the premises.

Dated at Cheyenne, Wyoming, this 22nd day of December, 1943.

T. Blake Kennedy

Judge.

Filed Dec. 22, 1943.

16] Stipulation.

It is hereby stipulated and agreed by and between the petitioner herein and the defendant, Maude B. Van Tassell, that paragraph 4 of the petition filed herein may be amended to read as follows:

"4. The estate taken for said public use is the exclusive use for a period of one year, with the right to renew from year to year for the duration of the war emergency as determined by the President, and for three years thereafter, together with all improvements thereon; with the right in the Government to demolish any and all improvements; and with the right in the Government at the termination of such period to remove any or all improvements placed thereon by said Government."

Dated at Cheyenne, Wyoming, this 21st day of January, 1944.

Carl L. Sackett
United States Attorney for the District of Wyoming
John C. Pickett
Assistant U. S. Attorney.
Maude B. Van Tassell
Defendant

Filed Jan. 24, 1944.

17] Order Amending Petition.

It having been stipulated between the petitioner and the defendant, Maude B. Van Tassell, that paragraph 4 of the Petition filed herein may be amended, and the Court having examined the said stipulation:

It Is Therefore Ordered, Adjudged, And Decreed that paragraph 4 of the Petition filed herein be and the same is hereby amended to read as follows:

"4. The estate taken for said public use is the exclusive use for a period of one year, with the right to renew

from year to year for the duration of the war emergency as determined by the President, and for three years thereafter, together with all improvements thereon; with the right in the Government to demolish any and all improvements; and with the right in the Government at the termination of such period to remove any or all improvements placed thereon by said Government."

Done in open court this 24th day of January, 1944.

T. Blake Kennedy
Judge

Filed Jan. 24, 1944.

18] Stipulation.

It is hereby stipulated and agreed by Maude B. Van Tassell that the sum of One Dollars ($1.00) is just compensation for the use and occupation of the lands taken in the within proceedings, and that the Court may enter an order fixing the sum of One Dollar ($1.00) per year as rental for the period provided for in the judgment of declaration of taking entered on the 22nd day of December, 1943.

It is further agreed that the undersigned received due and sufficient notice of the election of the United States to continue the use and occupation of said premises for a period of one year.

Dated this 18th day of October, 1945.

Maude B. Van Tassell
By Maude B. Van Tassell

Filed Nov. 28, 1945.

19] Order Awarding And Fixing Just Compensation.

It having been stipulated between the Petitioner and the Defendants, Maude B. Van Tassell, and the City of Cheyennne,

Wyoming, that the Court may enter an order fixing the sum of One Dollar ($1.00) per year as just compensation for the use and occupancy of the lands taken in the within proceeding, and the sum of One Dollar ($1.00) per year as rental for the use and occupancy of the streets and alleys located upon said premises;

It Is Therefore, Ordered, Adjudged And Decreed that the defendant, Maude B. Van Tassell, is hereby awarded the sum of One Dollar ($1.00) per year as rental for the use and occupancy of the lands described in the Petition for Condemnation filed herein and in the Judgment on Declaration of Taking and Supplemental Declaration of Taking entered herein on December 22, 1943. Such rentals are to continue for the period provided for in the aforesaid Judgment on Declaration of Taking.

It Is Further Ordered, Adjudged And Decreed that the sum of One Dollar ($1.00) is hereby awarded to the Defendant, the City of Cheyenne, a municipal corporation, as compensation and rental for the use and occupancy of the streets and alleys located upon the premises described in the Petition for Condemnation filed herein and in the Judgment on Declaration of Taking and Supplemental Declaration of Taking entered on December 22, 1943, such rentals to continue for the period provided for in the aforesaid Judgment on the Declaration of Taking.

3] Dated this 28 day of November, 1945.

T. Blake Kennedy
Judge

Filed Nov. 28, 1945.

21] Notice To Renew Exclusive Use
Of Property For One Year.

Notice is hereby given that the Petitioner in the above matter does hereby elect to renew the right to use the property described in the petition filed in the above entitled matter for a period of one year from December 22, 1951, and has deposited with the Clerk of the District Court for

the District of Wyoming, the sum of $2.00, as provided for in the Judgment on the Declaration of Taking.

Dated this 11 day of December, 1951.

J. J. Hickey
United States Attorney for the
District of Wyoming
John S. Miller Jr.
Assistant United States Attorney
for the District of Wyoming

Filed Dec. 11, 1951.

22] Order Directing Clerk To Issue Registry Checks.

It appearing to the Court that the Petitioner herein has deposited with the Clerk of this Court the sum of $2.00 covering the estimated compensation for the exclusive use for one year of the lands to be acquired herein, pursuant to a judgment on declaration of taking and on supplemental declaration of taking on the 22nd day of December, 1943:

It Is Therefore Ordered, Adjudged And Decreed that the Clerk of this Court issue a registry check payable to the defendant, City of Cheyenne, in the sum of One Dollar ($1.00), and to the estate of Maude B. Van Tassell, deceased, in the sum of One Dollar ($1.00), the same being in full payment of the amount due for the exclusive use for one year of the lands described in the plaintiff's petition.

Dated at Cheyenne, Wyoming, this 11 day of December, 1951.

T. Blake Kennedy
Judge

Filed Dec. 11, 1951.

23] Notice To Renew Exclusive Use Of Property For One Year.

Notice is hereby given that the Petitioner in the above

matter does hereby elect to renew the right to use the property described in the petition filed in the above entitled matter for a period of one year from December 22, 1952, and has deposited with the Clerk of the District Court for the District of Wyoming, the sum of $2.00, as provided for in the Judgment on the Declaration of Taking.

Dated this 8th day of December, 1952.

J. J. Hickey
United States Attorney for the
District of Wyoming
Harry A. Thompson
Assistant United States Attorney
for the District of Wyoming

Filed Dec. 8, 1952.

24] Order Directing Clerk To
Issue Registry Checks.

It appearing to the Court that in the above-captioned case the Judgment on Declaration of Taking ordered the payment of $2.00 to defendants Maude B. Van Tassell, et al., beginning with the year 1943, and it further appearing that a registry check was deposited and receipt taken therefor for the first year, from December 22, 1943, to December 22, 1944, and it further appearing that on the 1st day of May, 1945, an order was issued by this Court directing the payment of $1.00 to the defendant Maude B. Van Tassell, and $1.00 to defendant City of Cheyenne, and that thereafter on the 3rd day of October, 1945, a similar deposit was made which covered the year 1945, which has not been distributed, and it further appearing that on the 15th day of January, 1946, another check was deposited in the same manner, which was distributed pursuant to order of this Court, leaving since that time the undistributed amount of $2.00 in the hands of the Clerk, $1.00 to defendant Maude B. Van Tassell Estate and $1.00 to the City of Cheyenne;

And it further appearing that the Maude B. Van Tassell estate has now been closed and by executor's deed all right, title and interest in and to the property has been transferred

to John C. Arp and Mildred K. Arp, and it further appearing by letter exhibited to this Court from John U. Loomis, attorney for the estate, that the above mentioned monies should be distributed to John C. Arp and Mildred K. Arp:

25] It Is Therefore Ordered that the Clerk of this Court issue a registry check payable to Charles E. Lane, attorney for John C. Arp and Mildred K. Arp, the successors and assigns of the defendant Maude B. Van Tassell estate, the sum of $1.00, and to the defendaht City of Cheyenne, the sum of $1.00, the same being in full payment of the amount due for the exclusive use for one year, from December 22, 1944, to December 22, 1945, of the lands described in the petition.

Dated this 23 day of December, 1952.

T. Blake Kennedy
Judge

Filed Dec. 23, 1952.

26] Notice To Renew Exclusive Use Of Property For One Year.

Notice is hereby given that the Petitioner in the above matter does hereby elect to renew the right to use of property described in the petition filed in the above-entitled matter for a period of one year from December 22, 1954, and has deposited with the Clerk of the District Court for the District of Wyoming, the sum of $2.00, as provided for in the Judgment on the Declaration of Taking.

Dated this 29 day of November, 1954.

John F. Raper, Jr.,
United States Attorney for the
District of Wyoming
C. N. Bloomfield, Jr.,
Assistant United States Attorney
for the District of Wyoming

Filed Nov. 30, 1954.

Arp vs. United States of America

27] Motion To Terminate Condemnation Proceedings And Request For Appraisal Of Lands.

John C. Arp and Mildred K. Arp, successors in interest to the Defendant Maude B. Van Tassell, and owners in fee of the lands described in the Petition for Condemnation filed herein, move that this action be terminated pursuant to Title 42, Section 1524, U.S.C.A., for the reason that Section 1592 (d), sub-section (c), Title 42, U.S.C.A. provides that property acquired under the sub-chapter and retained after June 30, 1954, without having been used for the purposes of the Act should be returned to the original owners, and pursuant to said Section 1592 (d), sub-section (c), Title 42, the owners herein named allege that the Administrator and said owners do not agree as to the fair value of the property and request that the fair value shall be determined by three (3) appraisers as set forth in Section 1592 (d) (c), Title 42, U.S.C.A.

The owners herein designated present to this Honorable Court their offer to abide by the fair value determined by the appraisers designated pursuant to the statute and allege they will comply with the purposes of the Act as set forth in said above-enumerated Section and sub-section, and in compliance with Section 1525, Title 42, U.S.C.A., designated "Declaration of Policy; Disposing of Housing".

28] There is tendered herewith Registry Check No. 1075, in the sum of One Dollar ($1.00), issued by the Clerk of the United States District Court, tendered to the owners for payment of exclusive use from December 22, 1954, to December 22, 1955, which Registry Check is tendered to the Honorable Court for the purpose of returning the rental set forth in the Order of the Court of December 1\ 1954.

Said owners respectfully request the Honorable Court to set a hearing at its convenience for the determination of the issues herein presented.

Dated this 6th day of May, 1955.

Ellery, Gray & Hickey
By: J. J. Hickey
Charles E. Lane
Attorneys for successors in interest to Defendant Van Tassell.

Filed May 6, 1955.

Arp vs. United States of America

No. 1075

29] United States Of America, District Of Wyoming ss.

In The District Court Of The United States
For The District Of Wyoming

In The Matter Of The Registry Of The Court

At this day, it is ordered that the Clerk of this Court draw from the registry of the Court, to-wit,

The American National Bank of Cheyenne, Wyoming,

the sum of One Dollar and no cents ($1.00), deposited to the credit of the Court in No. 2901 Civil, United States of America, Petitioner, vs. Certain Parcels of Land in the City of Cheyenne, Laramie County, State of Wyoming, et al., Defendants, and pay to John C. Arp and Mildred K. Arp for payment for exclusive use from Dec. 22, 1954, to Dec. 22, 1955, of lands described in Petitioner's Petition, per order of Dec. 1, 1954.

Attest: Capitola G. Allison
Clerk

T. Blake Kennedy,
Judge

This check is payable only when not detached from above order

No. 1075 Cheyenne, Wyo., December 4, 1954.

The American National Bank of Cheyenne, Wyoming,

pay to the order of John C.Arp and Mildred K. Arp One Dollar and no cents ($1.00) from the registry of the District Court of the United States.

$1.00

Capitola G. Allison
Clerk of the U. S. District Court

30] Declaration Of Taking.

I, John D. Currie, Acting Commissioner of the Public Housing Administration of the United States of America, do hereby declare that:

1. (a) The lands described in Schedule A attached are

hereby taken for the use of the United States under the authority of the Act of Congress approved August 1, 1888, 25 Stat. 357 (U.S.C. Title 40, Sec. 257); the Act of February 26, 1931, 46 Stat. 1421 (U.S.C. Title 40, Sec. 258 (a) to 258 (e)); the Act of October 14, 1940, 54 Stat. 1125, as amended (the "Lanham Act", U.S.C. Title 42, Sec. 1521 et seq.), funds being available by virtue of Sec. 605 (c) of said Lanham Act as amended (U.S.C. Title 42, Sec. 1585 (c)). (b) The public use for which said lands are taken is the provision of housing pursuant to the Lanham Act as amended, supra, and more particularly Sec. 605 (a) thereof (U.S.C. Title 42, Sec. 1585 (a)), I having determined that the acquisition of a fee simple title in and to said lands is necessary to continue in use the housing constructed on said lands in the orderly demobilization of the war effort, to maintain the improvements constructed thereon, and to protect the investment of the United States in said improvements.

2. A description of said lands sufficient for the identification thereof is set forth in Schedule A annexed hereto and made a part hereof.

3. The estate taken for said public use is the full fee simple title in and to said lands.

4. A plan showing said lands is annexed hereto as Schedule B and made a part hereof.

5. The sum of money estimated by me to be just compensation for said lands and all interests therein, excluding the buildings and improvements thereon and appurtenances thereto which are the property of the United States, is set forth in Schedule A annexed hereto and made a part hereof. Said sum I herewith deposit in the registry of this Court for the use of the persons entitled thereto.

31] I am of the opinion that ultimate award of compensation for the taking of said lands will be within any limits prescribed by law to be paid as the price therefor.

In Witness Whereof, I, John D. Currie, Acting Commissioner of Public Housing Administration, thereunto duly authorized, have signed this Declaration of Taking as Acting Commissioner of the Public Housing Administration and pursuant to the

Delegation of Authority from the Housing and Home Finance Administrator (18 F.R. 4612-4613 as amended by 19 F.R. 2599) made under the provisions of the Lanham Act as amended, supra, this 17 day of August, 1955, in the City of Washington, District of Columbia.

United States Of America
By John D. Currie
Acting Public Housing
Commissioner

Filed Aug. 25, 1955.

32] Schedule A.

[The description of land which follows is identical with that set out in paragraph 3 of the petition for condemnation which appears at page 2.]

Purported owners, John C. and Mildred K. Arp; The Children's Hospital Association, a Colorado corporation.

Estimated value $48,000.00

Streets And Alleys within above tract Purported owner, City of Cheyenne

Estimated value 1.00

The total sum of money estimated to be just compensation for the fee simple title in and to the aforesaid lands and hereby taken is $48,001.00

[Schedule B is a plat showing lands referred to in the declaration of taking. Three copies of the schedule have been filed.]

34] Complaint For Condemnation.

1. This is an action of a civil nature brought by the United States of America at the request of John D. Currie,

Acting Commissioner of the Public Housing Adminstration, for the taking of property under power of eminent domain and for the ascertainment and award of just compensation to the owners and parties in interest.

2. The authority for the taking is the Act of Congress approved August 1, 1888, 25 Stat. 357 (U.S.C. Title 40, Sec. 257; the Act of February 26, 1931, 46 Stat. 1421 (U.S.C. Title 40, Sec. 258 (a) to 258 (e); the Act of October 14, 1940, 54 Stat. 1125, as amended (the "Lanham Act", U.S.C. Title 42, Sec. 1521 et seq.), funds being available by virtue of Sec. 605 (c) of said Lanham Act as amended (U.S.C. Title 42, Sec. 1585 (c)).

3. The use for which the property is to be taken is the provision of housing pursuant to the Lanham Act as amended, supra, and more particularly Section 605 (a) thereof (U.S.C. Title 42, Section 1585 (a), it having been determined that the acquisition of a fee simple title in and to said lands is necessary to continue in use the housing constructed on said lands in the orderly demobilization of the war effort, to maintain the improvements constructed thereon, and to protect the investment of the United States in said improvements.

35] 4. The interest to be acquired is the full fee simple title in and to said lands.

5. The property so to be taken is described in the Exhibit A hereto attached.

6. The persons having or claiming an interest in the property are John C. Arp and Mildred K. Arp, The Children's Hospital Association, a Colorado corporation and the City of Cheyenne, Wyoming.

7. Laramie County, Wyoming may have or claim an interest in the property by reason of taxes and assessments due and exigible.

8. In addition to the persons named, there are or may be others who have or may claim some interest in the property to be taken, whose names are unknown to the Petitioner and such persons are made parties to the action under the

designation "Unknown Owners."

Wherefore the Petitioner demands judgment that the property be condemned and that just compensation for the taking be ascertained and awarded and for such other relief as may be lawful and proper.

John F. Raper, Jr.
United States Attorney
District of Wyoming
Attorney for Petitioner

Trial by jury of the issue of just compensation is demanded by Petitioner.
Filed Aug. 25, 1956.

[Exhibit A, description of land, is identical with that contained in paragraph 3 of the petition for condemnation which appears at page 3 .]

47]

Amended Separate Answer of Defendants
John C. Arp and Mildred K. Arp.

Come now the above-named Defendants and for their amended separate answer to the Complaint for Condemnation of Plaintiff, show to the Court:

I. That the Defendants' are the owners in fee simple of the following described real estate to-wit:

[The description is identical with that in paragraph 3 of the petition which appears at page 3.]

That Defendants' fee simple ownership of said lands covers and includes all of that part of the corpus of said lands which does not consist of minerals of any nature or description and also includes and covers one-half of the corpus of said lands which consists of minerals of any nature or description.

48] II. Defendants' Objections and Defenses to the Taking of Their Property.

Arp vs. United States of America

First

That in regard to the condemnation of a fee simple title, predicated upon the alleged determination of the Acting Commissioner of Public Housing Administration that such fee simple title was and is necessary "to continue in use the housing constructed on said lands in the orderly demobilization of the war effort", the Defendants allege:

That the Acting Commissioner was and is without any power or authority under the statute mentioned in Paragraph 3 of the Complaint for condemnation, or any other statute of the United States, to make a determination"that the acquisition of a fee simple title in and to said lands is necessary to continue in use the housing constructed on said lands in the orderly demobilization of the war effort."

That at the time of said alleged determination, and for a long time prior thereto, said housing was not and had not been to any extent necessary in any manner in connection with the ordinary demobilization of the war effort.

That such alleged and purported determination was made without any jurisdiction, power or authority of said Acting Commissioner and was therefore made arbitrarily, capriciously and without any determining principle and was unreasoned.

Second

That in regard to the alleged determination of said Acting Commissioner "that the acquisition of a fee simple title in and to said lands is necessary * * * to maintain the improvements constructed thereon", the Defendants allege that the original judgment of condemnation of an occupancy right to said lands, which was entered in this action on December 22, 1943, provides in part:

49] "It Is Therefore, Ordered, Adjudged And Decreed that the exclusive use for a period of one year, with the right to renew from year to year for the duration of the war emergency as determined by the president, and three years thereafter, together with all improvements thereon, with the right of the Government to demolish any and all improvements thereon, if any, and with the right of the Government, at

the termination of such period, to remove any and all improvements placed thereon by said Government, * * *"

That the above-mentioned original condemnation judgement has been since said date of the entry thereof renewed from year to year and was renewed on December 22, 1954.

That the right of use and occupancy obtained by the United States under and by virtue of the provisions of said original condemnation judgment is now, and at all times since the date of entry has been in full force and effect and the United States has been and is still is in full and complete possession of said lands and the said housing improvements placed thereon by the United States.

That at all times since the entry of said original condemnation judgment the United States has had full, complete and unrestricted access to said lands for the purpose of maintaining said improvements in any manner or to any extent desired by the United States.

That the United States now has, and will have until the termination of its right of occupancy under said original judgment of condemnation, full and complete possession of said lands with a free and unrestricted right to enter upon said lands and maintain said improvements in any manner it may see fit.

That the Defendants have never directly or indirectly, in any manner, indicated an intention to interfere in any manner with the free and unrestricted right of the United States to enter upon said lands and maintain said improvements.

50] That said purported determination of said Acting Commissioner was made with full knowledge that the Defendants had never in any manner questioned the right of the United States to freely enter upon said lands in connection with the maintenance of said improvements, or for any other purpose, and that they have never expressed any intention so to do or made any threat so to do and therefor the purported determination of said Acting Commissioner that it was necessary for the United States to acquire a fee in said lands for the purpose of being able to maintain said improvements was

a determination which was made arbitrarily and capriciously and without any factual foundation and was without any determining principle and was unreasoned.

Third

That in regard to the condemnation of a fee simple title, predicated upon the alleged determination of the Acting Commissioner that such fee simple title was and is necessary to protect the investment of the United States in the improvements placed by it upon said lands, the Defendants allege:

1. That World War II, as to hostilities, ended August 21, 1945; that the war emergency of World War II, except as to certain phases which included Lanham Act Housing, ended on July 25, 1947; that said war emergency of World War II as to Lanham Act Housing ended on June 30, 1953.

2. That the right or estate in the lands involved herein, which the United States elected to acquire under its original condemnation proceeding and judgment, was the right to occupy and use said lands for housing during the war emergency referred to in said judgment and for three years thereafter, together with the right of the government, at the termination of said war emergency to get the greatest possible salvage out of said housing improvements by any appropriate salvage or liquidation proceeding open to it under the provisions of said condemnation judgment and the substantive rights of the government as fixed by the provisions of said judgment and the law applicable thereto.

51] 3. That under the provisions of said condemnation judgment and the rights and status of the government thereby established, the appropriate salvage or liquidation methods which were open to the government, beginning on July 1, 1953, and continuing for three years thereafter, were as follows:

(a) A sale by the government of its three-year right of occupancy above mentioned, through the assignment thereof;

(b) To continue in the use of said lands for the purpose of renting said housing improvements at a profit

during said three-year period;

(c) The removal of the housing improvements;

(d) A scrapping or wrecking of said housing improvements and a sale of the materials and equipment obtained thereby.

4. That the provisions of Title 42, U.S.C.A. § 1485 (a), relied upon by the government, were not intended to and did not enlarge, extend or in any manner change the substantive right which the government had at the time of the enaction of said statute or salvaging or liquidating what it could out of the improvements constructed by it upon lands which it held under lease or right of occupancy under condemnation judgments.

5. That said statute constituted no more than a legislative recognition of the principle that the appropriate salvage or liquidation of the properties constructed by the government for a public use, constituted a "public use".

6. That the Acting Commissioner has construed and is construing the above mentioned statute as creating in favor of the government a right to acquire fee title to the lands involved herein by condemnation for a purpose other than an appropriate salvage or liquidation purpose.

52] 7. That the said Acting Commissioner has construed, and is construing, said statute as authorizing him to purchase the lands involved herein through this condemnation proceeding, with the intent and purpose of making said investment in said lands with the expectancy or hope that he will ultimately, after he has acquired title to said lands, be able to sell said lands with said improvements situate thereon, at a price that will enable him through said enterprise to obtain a sum in excess of what he can obtain under the appropriate salvage or liquidation proceedings open to him under the provisions of said condemnation judgment and the government's substantive rights as established thereby.

8. That if said statute is construed as authorizing the government to acquire a fee title to the lands involved

herein for any purpose other than putting into effect and carrying out an appropriate salvage or liquidation operation, then said statute in this regard is unconstitutional and void as being in violation of the Fourteenth Amendment to the Constitution of the United States in that it purports to authorize the government to acquire a fee title to lands by condemnation for a non-public use.

9. That on or about July 1, 1953, said Commissioner determined that the greatest possible salvage could be obtained by the government through the government's continued occupancy and possession of said lands for said three year period following the termination on June 30, 1953 of said war emergency in respect to Lanham Act Public War Housing and the operating of said housing units or apartments as the landlord thereof for such profit as could be obtained through such a rental operation.

10. That in keeping with said determination, said Commissioner has ever since June 30, 1953, remained in the possession of said housing units or apartments under the provisions of said condemnation judgment and the government's right of salvage, and ever since June 30, 1953, has rented and is still renting said housing units or apartments.

53] 11. That at all times since July 1, 1953, the said Commissioner has continuously rented all of said housing units or apartments and through such rental operation has salvaged for the government the net sum of not less than $300,000.00.

12. That the government's said right to occupy and use said lands in connection with its said rental salvage operation, or any other appropriate salvage operation, will not terminate until June 30, 1956, and during the remainder of said three year period the said rental salvage operation now being conducted by the government will net to the government by way of salvage a net sum of not less than $50,000.00.

13. That the government, during the time that it operated said housing units as a Lanham Act Housing project, from May 1941 down to June 30, 1953, realized a net profit of not less than $800,000.00.

14. That Defendants have never at any time questioned the right of the government to remain in the possession and occupancy of the lands involved for a period of three years after June 30, 1953, for the purpose of carrying on such appropriate salvage or liquidation operation as the government might elect to pursue.

15. That since July 1, 1953, the Defendants have never in any manner questioned the right of the government to proceed with the rental method of salvage adopted by it and the Defendants have never in any manner interferred with or obstructed the government in any manner or to any extent in carrying on the said salvage operation adopted by the government, and the government since July 1, 1953, has always had and still has full, complete and unrestricted access to said lands for the purpose of carrying on said rental salvage operation or for the purpose of carrying on any other appropriate method of salvage which the government may choose to put into effect.

54] 16. That the determination of said Commissioner to acquire a fee title to said lands was made in August 1955, more than two years after said Commissioner had elected to put into effect the rental salvage operation hereinbefore referred to and while said salvage operation was being carried on.

17. That the said determination of said Commissioner to acquire fee title to said lands by condemnation was not a determination made for the purpose of protecting the government's right of salvage or liquidation because when said determination was made the government was then in course of protecting its investment by carrying out the rental salvage operation hereinbefore mentioned.

18. That on May 6, 1955, about three months prior to the time that said Commissioner made said determination that it was necessary for the United States to acquire a fee title to said lands in order to protect its investment in said housing improvements, the Defendants in this proceeding, by motion filed herein, offered to pay to the United States the full, fair value of said housing improvements pursuant to and in keeping with an appraisal of said improvements to be made by three appraisers one of whom would be chosen by said

Commissioner, one to be chosen by the Defendants, and the third to be chosen by the first two appraisers; that said method of appraisal is one which has been approved by Congress under the provisions of Title 42 U.S.C.A., § 1592 (d), subsection (c).

19. That Defendants now again offer to pay to the United States the full, fair value of said improvements to be arrived at by an appraisal made in keeping with the above-mentioned method of appraisal or by any other method of appraisal that the Court may designate.

55] 20. Defendants allege that said Commissioner knew at the time he made said determination that it was necessary for the United States to acquire a fee simple title to said lands by condemnation in order to protect the government's investment in said improvements that he had theretofore elected to protect the investment of the United States in said improvements through and by means of the rental salvage operation hereinbefore set forth, and he knew that said rental salvage operation had at that time been carried on by him for over two years and that by means of said rental salvage operation he had already obtained through the net profits derived from said operation salvage of a value in excess of $200,000.00; that said Commissioner also knew at the time he made said determination that such determination had no relation to any appropriate or proper method of salvage or liquidation but, on the other hand, was made for the purpose of placing the United States in a position where through a favorable speculative enterprise it might obtain profits over and above any amount which was obtainable through any appropriate method of salvage or liquidation open to the United States under the provisions of said condemnation judgment and its substantive rights thereunder; that said Commissioner also knew at the time he made said determination that the Defendants had some months prior thereto made a formal bona fide offer in this Court to pay the United States the full, fair value of said improvements to be arrived at by a method of appraisal approved by Congress.

That by reason of the facts and circumstances hereinbefore set forth, the Defendants allege that the said determination of the Commissioner that it was necessary for the United States to acquire title in fee simple to said lands

by condemnation proceedings in order to protect the investment of the United States in said improvements was a determination that was made arbitrarily and capriciously, without any factual foundation, and without any determining principle, and was unreasoned.

56] Defendants further allege that by reason of the offer of Defendants in May of 1955 to pay to the United States the full, fair value of said improvements as arrived at by a method of appraisal approved by Congress and by reason of the renewal of said offer made in this Answer, it appears that from a factual and legal standpoint no necessity in respect to the protection of the investment of the United States in said improvements could have existed at the time this proceeding was commenced and that such necessity does not now exist.

Wherefore, by reason of the law and facts and circumstances hereinbefore set forth, Defendants pray that Plaintiff's Complaint for condemnation be dismissed and for the entry of a judgment in favor of the Defendants and against the Plaintiff.

Ellery, Gray & Hickey
By: C. R. Ellery
C. E. Lane
Attorneys for the Defendants
John C. Arp and Mildred K. Arp.

Filed Dec. 12, 1955.

57] Motion To Strike From Amended Answer Of Defendants John C. Arp And Mildred K. Arp.

The plaintiff moves the court to strike all of Section II of the amended answer of defendants John C. Arp and Mildred K. Arp on the following grounds:

1. The defendants' objections to the taking under the power of eminent domain are without legal foundation.

2. The defendants' allegation that the Acting Commissioner

of the Public Housing Administration lacks the power and authority under any statute to make a determination that the acquisition of a fee simple title to the lands is necessary is an erroneous conclusion.

3. The defendants' allegation that the Acting Commissioner in determining the necessity to acquire the fee simple title to protect the Government's interest in the improvements, acted capriciously and in bad faith, sets forth no substantial fact which, if true, is sufficient in law to substantiate a finding of arbitrary or capricious action or bad faith.

4. Although the "Government's investment" as used in Section 1585 (a) of Title 42, U.S.C.A., is the market value of the improvements at the time of taking, the defendants erroneously imply that by this term the Congress intended the Commissioner to exercise his discretion to condemn the fee only in the event that the original cost of the improvements is more than the sum of the rents collected plus salvage value of the improvements.

58] John F. Raper, Jr.
United States Attorney
District of Wyoming

Filed Feb. 1, 1956.

60] Motion For Leave To File Supplemental Separate Answer Of John C. Arp And Mildred K. Arp.

Come now the above named defendants and move the Court for an Order permitting the defendants to file their separate supplemental answer to the complaint for condemnation herein, a copy of said separate supplemental answer being attached hereto and by reference made a part hereof.

Plaintiff will take notice that the said motion will be presented to the Court at the hour of 10:00 A.M. on March 12, 1956.

John C. Arp and Mildred K. Arp,
Defendants
By Norman B. Gray
For Ellery, Gray & Hickey
Charles E. Lane
Their Attorneys

Filed Feb. 29, 1956.

Arp vs. United States of America

61] Supplemental Separate Answer
Of John C. Arp And Mildred
K. Arp.

Come nc the defendants, John C. Arp and Mildred K. Arp, and for their supplemental answer to the complaint here, show to the Court:

1. That on December 12, 1955, these defendants filed in the above named Court their amended separate answer to plaintiff's complaint.

2. That subsequently, and on or about December 23, 1955, in a conference in chambers with T. Blake Kennedy, Judge retired, attended by C. R. Ellery, of counsel for defendants, and John F. Raper, Jr., counsel for plaintiff, a discussion occurred relative to future procedure and a discussion was also had of settlement possibilities between the parties; that the parties indicated willingness to attempt to work out such settlement and Mr. Raper agreed to bring to Cheyenne, Wyoming, an authorized person or persons of the Public Housing Administration to aid and assist him in working out a settlement of the case, if at all possible.

62]3. On January 5, 1956, Mr. Raper advised counsel for defendants that an official of the Public Housing Administration with authority to negotiate a settlement of the litigation was in his office, and a conference was arranged for 4:00 P.M. that day; that at such conference, counsel for defendants were advised that Mr. Prisin-Zano, an attorney for the Public Housing Administration then present at said conference, had the necessary authority to negotiate a settlement and the only terms of settlement which would be considered by plaintiff were then made known to counsel for defendants.

4. That thereafter and on January 7, 1956, the defendants, in writing, delivered their acceptance of the terms of the settlement offered by the plaintiff, and defendants allege on information and belief that said acceptance was then forwarded to the Department of Justice and to the Public Housing Administration in Washington, D.C., and was by each of said departments considered and approved; that counsel for defendants were so advised on or about January 17, 1956,

and on said date were further advised that all that remained to be done to dispose of and settle the litigation herein was the drafting of certain instruments necessary to carry it into effect, and that Mr. McFeely, an attorney of the San Francisco office of the Public Housing Administration was authorized and directed to prepare and to have executed by all parties the said instruments.

5. That subsequently and on January 21, 1956, a conference was held at Cheyenne, Wyoming, between counsel for plaintiff and counsel for defendants and at such conference agreement was reached as to procedure that would be followed to terminate the litigation and it was further understood and agreed that on Friday, January 27, 1956, a meeting would be held between the authorized agents of plaintiff and the defendants for the purpose of closing the transaction and terminating the proceedings herein.

63] 6. That in reliance upon the representations, acts and conduct of plaintiff's authorized agents as aforesaid, the defendants, to their detriment, incurred and paid and have become obligated to pay costs and expenses that would not otherwise have been incurred or paid, in the sum of not less than $2,500.00, and in addition thereto, defendants devoted a great deal of time and energy in arranging to take over the management, operation and control of the improvements herein on February 1, 1956.

7. That by letter of the Acting Director of the San Francisco office of the Public Housing Administration dated January 27, 1956, the defendants were advised that plaintiff would not carry out the terms of the settlement theretofore agreed upon and at all times since, plaintiff has refused and continues to refuse to carry into effect the settlement agreement made and upon which these defendants relied to their detriment and on the contrary plaintiff is now attempting vigorously to prosecute the complaint herein, whereby this plaintiff improperly, unlawfully and without authority, seeks to take the lands of defendants herein for the sole purpose of putting said lands in the "marketplace" for resale to the highest bidder at a contemplated profit to plaintiff.

8. That by reason of the specific authorization granted

to the agents of plaintiff for the particular purpose of settling the controversy herein, and by reason of the representations, acts and conduct of the said agents made within the scope of their special authority and relied upon by defendants to their detriment, the plaintiff is estopped further to prosecute the proceedings herein.

64] Wherefore, these defendants pray:

1. That the Court enter its Order requiring the parties hereto to carry out the understanding and agreement of the parties for settlement of the controversy herein; or in the alternative;

2. That plaintiff's complaint of condemnation be dismissed and for judgment for defendants and against the plaintiff.

John C. Arp and Mildred K. Arp,
Defendants
By Norman B. Gray
For Ellery, Gray & Hickey
Charles E. Lane
Their Attorneys

65] [Objection to Motion for Leave to File Supplemental Answer.]

Plaintiff's Objections To The Granting Of The Motion For Leave To File Supplemental Separate Answer Of Defendants John C. Arp And Mildred K. Arp, Are As Follows:

1. This condemnation suit is for the taking of the fee title to the land only, the improvements being the property of the plaintiff prior to the filing of the Declaration of Taking.

2. The Defendants' offer referred to in the Defendants' proposed supplemental answer involved not only the land and improvements under the control and jurisdiction of the Public Housing Administration but also involved litigation under the control of the Attorney General of the United States.

3. The Attorney General is the only official with authority to compromise the condemnation suit. See Executive Order 6166, Section 5, Title 5 U.S.C.A. 124-132. This power was not delegated to the Plaintiff's attorney in this case nor was he authorized to accept the offer in whole or in part nor did he presume or represent himself to have such authority. Final settlement of this suit could not have been made without the approval of the Attorney General.

4. Neither the Plaintiff's attorney nor the Public Housing Administration had authority to submit to Defendants an offer of compromise of this suit, which, if accepted, would be binding on the Plaintiff. Any such offer would, under existing law, be conditioned on approval of the Attorney General.

5. Defendants do not allege in their proposed supplemental answer that their written offer for the land and improvements and settlement of the litigation was accepted.

66] 6. Contrary to the Defendants' allegation in paragraph 7 of the proposed supplemental answer that the Plaintiff unlawfully seeks to take the lands for the sole purpose of putting said lands in the market place for resale to the highest bidder for a contemplated profit, the Plaintiff is taking the lands under a mandate of Congress "to protect the Government's investment" and to maintain the improvements thereon. See 1585)a) of Title 42, U.S.C.A. To do otherwise might be construed as a dereliction of duty, resulting in loss of the improvements and the additional cost of restoring the land to its original condition.

7. The Defendants' proposed supplemental answer is an attempt to enforce specific performance of a purported contract involving property valued at more than $100,000.00 not included in the condemnation suit, viz. real estate improvements and personal property and, in effect, is an independent suit against the soveriegn which this court lacks jurisdiction to entertain by reason of the subject matter and the amount involved.

8. Since title vested upon the filing of the declaration of taking and the City of Cheyenne and the Childrens Hospital had interests in the land as well as defendants Arp,

the suit may not be dismissed as prayed for before determination and payment of just compensation and is specifically unauthorized by Rule 71A, Federal Rules of Civil Procedure.

9. That a supplemental pleading such as that proposed by Defendants is not authorized by Rule 71A (e) Federal Rules of Civil Procedure.

John F. Raper, Jr.
United States Attorney
District of Wyoming

Filed March 12, 1956.

[The memorandum decision, filed May 9, 1956, is reported at 141 F. Supp. 300.]

90] Order Ruling On Motions.

Certain pending motions in the above entitled cause having come on heretofore to be heard by the Court, the petitioner appearing by John F. Raper, Jr., Esquire, United States Attorney for the District of Wyoming, and the defendants John C. Arp and Mildred C. Arp appearing by Norman B. Gray, Esquire, John J. Hickey, Esquire, and Charles E. Lane, Esquire, their attorneys, and said motions having been argued by counsel and by the Court taken under advisement, and the Court now being fully advised in the premises:

It Is Therefore Ordered by the Court that the motion of the petitioner to strike the affirmative defenses contained in the amended answer of said defendants be and is hereby granted; that the motion of said defendants for leave to amend their amended answer by filing a fourth affirmative defense be and is hereby denied; that the motion of said defendants to terminate the condemnation proceedings be and is hereby denied; and that the motion of said defendants for leave to file the tendered supplemental answer be and is hereby denied.

Dated May 14th, 1956.

A. Sherman Christenson
United States District Judge,
Assigned.

Filed May 14, 1956.

110] Verdict.

We, the jury duly empaneled in the above entitled cause, do find that the just compensation to be paid to the Defendants John C. Arp and Mildred K. Arp for the taking of the land described in the Complaint for Condemnation is $75,000.00.

Harold Hellbaum
Foreman

Filed July 13, 1956.

111] Judgment.

The above-entitled matter having come on regularly for trial before a jury on the issue of just compensation beginning on July 10, 1956, and continuing thereafter until the evidence was closed and a verdict returned on July 13, 1956, the Plaintiff appearing and being represented by John F. Raper, Jr., United States Attorney for the District of Wyoming, and Defendants John C. Arp and Mildred K. Arp appearing and being represented by J. J. Hickey and Norman B. Gray of Ellery, Gray & Hickey, Attorneys at Law of Cheyenne, Wyoming, the Defendant, The Children's Hospital Association, a Colorado Corporation, being on notice but in default and not appearing, the Defendant County of Laramie, Wyoming, not appearing but having filed its Claim, the Defendant City of Cheyenne, a Municipal Corporation, having filed its Disclaimer herein, and any unknown owners having been notified by publication, the Court having considered the Declaration of Taking and other pleadings and matters herein, along with the evidence and the Verdict of the Jury, with respect to questions of law to be determined by it and being fully advised in the premises,

112] It Is Therefore Hereby Ordered, Adjudged And Decreed that the Plaintiff's taking of Defendants' land in condemnation was and is lawful and that title to said land vested in the Plaintiff on August 25, 1955, and that the land described in Plaintiff's Complaint, hereinafter described, be and is hereby condemned to the use of the United States of America:

All that tract or parcel of land lying and being in the Southwest corner of Section 6, Township 13 North, Range 66 West, 6th Principal Meridian, in the City of Cheyenne, Laramie County, Wyoming, and more particularly described as follows:

Beginning at the Southwest corner of Section 6; thence North 58° 35' 15" East 2042.75 feet to the true point of beginning; thence North 0° 07' West 300 feet to an iron pipe; thence South 89° 53' West 380.44 feet to an iron pipe; thence North 0° 31' West 900 feet to an iron pipe; thence South 83° 32' East 1310.65 feet to an iron pin; thence South 0° 07' East 1050 feet to an iron pin; thence South 89° 53' West 915 feet to the true point of beginning, containing 30.89 acres of land, more or less.

It Is Further Hereby Ordered, Adjudged And Decreed that Defendants John C. and Mildred K. Arp have judgment against the Plaintiff in the sum of $75,000.00, of which said amount, $48,000.00 has been deposited in the Registry of the Court and Plaintiff is ordered to forthwith deposit the further sum of $27,000.00, together with interest thereon at the rate of 6% per annum from and including August 25, 1955, and that the Clerk of this Court be and is hereby authorized to pay over to Defendants John C. and Mildred K. Arp all of such sums deposited on demand of said Defendants after deduction therefrom unpaid taxes of the County of Laramie, Wyoming, if any, which said amount of taxes, if any, the said Clerk of Court be and is hereby directed to pay over to Laramie County, Wyoming.

It Is Further Hereby Ordered, Adjudged And Decreed that just compensation for Defendant, The Children's Hospital Association, a Colorado Corporation, for its interest in the condemned lands, consisting of a one-half interest in all oil and mineral rights thereunder, is nominal and that the Clerk be and is hereby ordered to pay over to said Defendant the sum of $1.00 out of funds deposited in the Registry of the Court on August 25, 1955.

113] It Is Further Hereby Ordered, Adjudged And Decreed that the Plaintiff pay all costs incident to the action, except that Defendants pay their own attorney and witness fees.

To all of which the Defendants John C. and Mildred K. Arp duly excepted, which exceptions are by the Court allowed.

Dated: July 25th, 1956.

A. Sherman Christenson
Judge, Assigned

Approved As To Form: John F. Raper, Jr. United States Attorney for the District of Wyoming, Attorney for Plaintiff Ellery, Gray & Hickey, By: Norman B. Gray, Attorneys for Defendants, John C. and Mildred K. Arp.

Filed July 25, 1956.

114] Motion For New Trial.

Come Now the defendants, John C. Arp and Mildred K. Arp, and move that the verdict of the jury in the above entitled cause be set aside and the judgment entered be vacated and set aside and that a new trial be granted to the defendants for the following reasons:

1. The Court erred in striking the amended answer of the defendants.

2. The Court erred in denying the motion of these defendants for leave to amend their amended answer by inclusion of "fourth" affirmative defense in that by such defense the defendants proposed to tender a genuine issue of a material fact in that on and after January 17, 1955, no resolution adopted by the City Council of Cheyenne, Wyoming, that said housing was suitable for long term use was outstanding and because no such resolution was outstanding the administrator under the provisions of Sections 42 U.S.C.A. § 1553 and § 1584 was without authority to do more than proceed to remove tenants from the said housing project and thereafter expeditiously "by demolition or otherwise" to remove the temporary improvements from the lands of the defendant and consequently the attempt of the administrator to take the lands of defendants by the proceedings herein is contrary to law and without adequate determining principle and therefore arbitrary and capricious; that the Court in its memorandum decision erroneously

assumed that such proposed "fourth" affirmative defense was raised under the provisions of 42 U.S.C.A. § 1592 (d)
115] (c) and disposed of the matter on such basis and failed to consider said proposed amendment as it related to the said Sections 1553 and 1584 above; attached hereto and by reference made a part hereof are duly certified copies of the resolutions adopted by the Council of the City of Cheyenne pertaining to the matter here in question.

3. The Court erred in denying the motion of the defendants to file a proposed supplemental answer interjecting the defense of equitable estopple based on the occurrence of events subsequent to the filing of the amended answer for the reason that said supplemental answer was sufficient to raise a genuine issue of material facts and was sufficient to permit the defendants to introduce evidence at the trial to sustain said defense; that while it is true that the Court by consent gave consideration to certain statement of facts made by counsel in the arguments on said motion the defendants at that time had not been afforded an opportunity by discovery or otherwise to obtain all of the facts material to said defense and these defendants in good faith believed and still believe that they can produce evidence at the trial sufficient to sustain the defense of equitable estopple; that the action of the Court necessarily deprives the defendants of the opportunity to develop all of the facts material to the issue tendered by the supplemental answer.

4. The verdict is contrary to law.

5. The verdict is contrary to the evidence.

6. The verdict is contrary to the weight of evidence.

7. There is no substantial evidence to sustain the verdict.

116] 8. The verdict is wholly inadequate in the amount fixed as just compensation to the defendants and appears to have been given under the influence of passion and prejudice.

9. The verdict discloses upon its face that the jury failed entirely to observe the instructions of the Court with

regard to the consideration of the highest and best use of the premises and reached its verdict contrary to said instructions.

10. The Court erred in permitting the United States to introduce into evidence the price paid by these defendants on August 13, 1952, for all of the lands in Interior Heights Addition, purchased from the Children's Hospital Association for the following reasons:

a. The purchase so made approximated in all 667 acres of land including 30.89 acres involved in this proceeding, and the taking by the United States of said 30.89 acres out of the said 667 acres rendered the price paid by these defendants for all of said lands incompetent and inadmissable as evidence for any purpose in this proceeding and the defendants were prejudiced thereby not withstanding the instructions of the Court that such price was of little if any benefit in arriving at just compensation.

b. The evidence before the jury at the time the purchase price was offered as evidence conclusively established such changed conditions and circumstances between the date of purchase in October, 1952, and the date of taking in August, 1955, that the price paid by defendants could serve no useful purpose whatsoever and particularly in the light of opposing counsels statement to the jury that its own evidence would show the value of the said small portion to exceed at the time of taking the purchase price paid by the defendants for the entire 667 acres; that the evidence so produced greatly prejudiced these defendants before the jury.

c. Because of changed conditions and circumstances
117] between the date of purchase and the date of taking the price paid was so remote that it could not be material for any purpose and defendants were prejudiced by the introduction in evidence of the price paid.

11. The Court erred in excluding evidence offered by plaintiff through the witness of Dellinger of an offer made by the said Dellinger to these defendants in the sum of $3000.00 for lands almost immediately adjacent to the lands in question for the purpose of construction of single unit dwellings for the reason that counsel for the plaintiff, on

cross examination of the witness Dellinger, voluntarily interjected into the case evidence that the witness Dellinger would pay to these defendants the sum of $3000.00 per acre for the lands in question.

12. The Court erred in permitting the witness Black, over objection of these defendants, to testify that in March of the year 1953 he purchased the lands identified in this proceeding as the Leisher-Black Addition consisting of 25.54 acres for the sum of $14,820.00 for the reason that no proper foundation had been laid and said sale was too remote in time, and because of changed conditions and circumstances said evidence was irrelevant and incompetent for any purpose and the defendants were prejudiced thereby.

13. That the Court erred in permitting the witness Nation to testify, over objection of these defendants, the price received for the sale of some 26 lots in the premises described in this proceeding as Rose Ella Addition for the reason that said Addition is not within the immediate proximity of the premises herein and said sale was too remote in time and was irrelevant and incompetent for any purpose, no proper foundation having been laid for the admission of such evidence and the defendants were prejudiced thereby.

14. That the verdict, unless set aside, will result in a clear miscarriage of justice for the reason that the uncontroverted evidence voluntarily interjected by plaintiff established that had the government's improvements been removed from the land these defendants at the time of taking could readily have sold the said premises to the witness Dellinger at the sum of $3000.00 per acre or a total approximate price of $93,000.00.

118] 15. The Court erred in rendering the judgment herein for the reason that it appears from the record and files of the Court in Docket No. 2901 Civil that the complaint filed on August 25, 1955, and the Declaration of Taking filed on the same date were not the commencement of a new proceeding for condemnation but were nothing more than a Supplemental Complaint and a Supplemental Amended Declaration of Taking and no order of the Court has ever been entered granting leave to the United States to file the said Supplemental Complaint as required under Rule 15 (d) of the Rules of Civil

Procedure, or to file the said Supplemental Amended Declaration of Taking and as a consequence any proceedings had under the said Supplemental Complaint and said Supplemental Amended Declaration of Taking are void and of no force or effect; that these defendants prior to August 25, 1955, acquired vested and substantial rights under the judgment entered on December 22, 1943, and for the Court now to grant to the United States, at this late date, the right to alter amend and acquire an entirely different estate in the premises of which it took possession on August 21, 1943, with the right only to "the exclusive use for a period of one year, with the right to renew from year to year for the duration of the war emergency as determined by the President, and three years thereafter, * * *" is arbitrary and unjust to these defendants and a deprivation of the rights of these defendants without due process of law.

Dated this 3rd day of August, 1956.

Norman B. Gray
J. J. Hickey
Attorneys for Defendants Arp

Filed Aug. 3, 1956.

119] Exhibit A.

[Certified Copy.]

Resolution No. 968

Entitled: "A Resolution Determining Local Need And Acceptability Of War Housing Projects No. 48101."

Whereas, the United States of America, acting by and through the Federal Public Housing Authority, constructed and developed, pursuant to the provisions of the Lanham Act, in the City of Cheyenne, Wyoming, War Housing Projects No. 48101, consisting of 665 temporary family dwelling units; and

Whereas, pursuant to the provisions of Section 602 (c) of the Housing Act of 1950 (Public Law 475 - 81st Congress)

the mentioned structures may be disposed of by the Government, in the manner prescribed in the mentioned Act, without the necessity of the structures being removed from the existing sites of the Projects provided it is determined by this Council that, on the basis of local need and acceptability, the structures involved are satisfactory for long term housing or non-housing use; and

Whereas, it is the desire of this Council to hereby so determine.

Now, Therefore, Be It Resolved By The Council Of The City Of Cheyenne, Wyoming:

(1) That the structures, consisting of 665 temporary family dwelling units in War Housing Projects No. 48101, and located in the City of Cheyenne, Wyoming, be and are hereby determined to be, on the basis of local need and acceptability, within the meaning of the provisions of Section 602 (c) of the Housing Act of 1950, satisfactory for long term housing or non-housing use.

(2) This Resolution shall become effective immediately.

Presented, read, adopted and passed this 11th day of May, A. D., 1953.

R. E. Cheever
Mayor

Attest: Flo M. Waltersheid
City Clerk

(Seal)

120] Exhibit B.

[Certified Copy.]

Resolution No. 1000

A Resolution Rescinding In Part Resolution No. 968 And Re-Affirming The Findings Made In Such Resolution In Connection With War Housing Projects Nos. WYO-48011 and WYO-48085.

Whereas, the Council of the City of Cheyenne, Wyoming, by Resolution No. 968, adopted May 11, 1953, determined that the structures consisting of six hundred sixty-five (665) temporary family dwelling units in War Housing Project No. Wyo-48101, located in the City of Cheyenne, Wyoming, was determined to be on the basis of local need and acceptability within the meaning of the provisions of Section 602 (c) of the Housing Act of 1950, satisfactory for long term housing or non-housing use; and

Whereas, the six hundred sixty-five (665) temporary dwellings referred to therein as Project No. Wyo-48101, included all of the three projects within the City of Cheyenne by the designated project management combination number; and

Whereas, it has now been determined that such resolution should be corrected and amended to correctly describe such projects by designating the correct individual project development numbers, which are Wyo-48011, Wyo-48081, Wyo-48084, and Wyo-48085;

Now, Therefore, Be It Resolved by the Council of the City of Cheyenne, Wyoming:

1. That the structures consisting of two hundred eighty-sevey (287) temporary family dwelling units in War Housing Project No. Wyo-48011 and one hundred ninety-eight (198) temporary family dwelling units in War Housing Project No. Wyo-48085, located in the City of Cheyenne, be and are hereby determined to be on the basis of local need and acceptability within the meaning of the provisions of Section 602 (c) of the Housing Act of 1950, satisfactory for long term housing or non-housing use;

2. That Resolution No. 968, adopted by this Council on May 11, 1953, is hereby amended to correctly describe the projects referred to therein as set forth in Paragraph numbered 1, above;

3. Except as hereinabove set forth, Resolution No. 968, is hereby rescinded.

Presented, read, adopted and passed this 15th day of February, A.D., 1954.

Arp vs. United States of America

V. S. Christensen
Mayor

Attest: Flo M. Waltersheid
City Clerk

122] Resolution No. 1037

[Certified Copy.]

Entitled: "A Resolution Rescinding In Part Resolution No. 1000 And Reaffirming The Findings Made In Such Resolution In Connection With War Housing Project No. Wyo-48085."

Whereas, the Council of the City of Cheyenne, Wyoming, by Resolution No. 1000 determined that the structures consisting of 485 temporary family dwelling units in War Housing Proejcts Nos. Wyo-48011, and Wyo-48085, located in the City of Cheyenne, Wyoming were determined to be, on the basis of local need and acceptability, within the meaning of the provisions of Section 602 (c) of the Housing Act of 1950, satisfactory for long term housing or Non-Housing use; and

Whereas, it has now been determined that such Resolution should be corrected and amended to exclude therefrom the 287 temporary family dwellings located in Project No. Wyo-48011 for the reason that the buildings are not suitable for long term Housing or Non-Housing use and that there is no continuing need for the maintenance of such project;

Now Therefore, Be It Resolved By The Council Of The City Of Cheyenne, Wyoming:

1. That the Structures consisting of two hundred eighty-seven (287) temporary family dwelling units in War Housing Project No. Wyo-48011 are no longer necessary or suitable for long term Housing or Non-Housing use and that there is no continuing need for such use;

2. That the Federal Government may dispose of the Buildings and Improvements in such Housing Project as it sees fit;

3. That the determination of local need as set out in

Resolution No. 1000 insofar as it applied to Project No. Wyo-48011 be, and the same hereby is, rescinded.

Presented, Read And Adopted This 4th day of October, 1954.

V. S. Christensen
Mayor

Attest: Flo M. Waltersheid

(Seal)

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[23] Resolution No. 1045

[Certified Copy.]

Entitled: "A Resolution Re-Affirming The Findings Made In Resolution No. 968 In Connection With War Housing Project No. Wyo-48085 And Otherwise Known As Van Tassell Terrace."

Whereas, the Council of the City of Cheyenne, Wyoming, by Resolution No. 968, adopted May 11, 1953, determined that the structures consisting of one hundred ninety-eight (198) temporary family dwelling units in War Housing Project No. Wyo-480-85, otherwise known as Van Tassell Terrace, located in the City of Cheyenne, Wyoming, was determined to be on the basis of local need and acceptability within the meaning of the provisions of Section 602 (c) of the Housing Act of 1950, satisfactory for long term housing or non-housing use.

Now, Therefore, Be It Resolved by the Council of the City of Cheyenne, Wyoming:

1. That the structures consisting one hundred ninety-eight (198) temporary family dwelling units in War Housing Project No. Wyo-48085, otherwise known as Van Tassell Terrace, located in the City of Cheyenne, Wyoming, be and are hereby determined to be on the basis of local need and acceptability within the meaning of the provisions of Section 602 (c) of the Housing Act of 1950, satisfactory for long term housing or non-housing use during the year 1955.

Presented, read, adopted and passed this 6th day of January A.D., 1955.

V. S. Christensen
Mayor

Attest: Flo M. Waltersheid
City Clerk

(Seal)

124]

Exhibit E.

[Certified Copy.]

Resolution No. 1051

Entitled ,

A Resolution Rescinding Resolution No. 1045

Whereas, the Council of the City of Cheyenne on the 6th day of January, 1955, adopted Resolution No. 1045 relating to the use of Van Tassell Terrace in the City of Cheyenne, and

Whereas, it has now been determined that the said Resolution did not in truth and in fact properly represent the understanding existing between the Council of the City of Cheyenne and the Public Housing Administration, and

Whereas, there is no longer any purpose to be served by the said resolution;

Now, Therefore, Be It Resolved by the Council of the City of Cheyenne, Wyoming:

1. That Resolution No. 1045 be and the same hereby is rescinded.

Presented, Read and Adopted and Passed this 17th day of January, A.D., 1955.

V. S. Christensen
Mayor

Attest: Flo M. Waltersheid
City Clerk

(Seal)

125] Order Overruling Motion For New Trial.

Now on this 20th day of August, 1956, there came on regularly to be heard the Motion for New Trial filed herein by the Defendants John C. Arp and Mildred K. Arp, the Plaintiff appearing by John F. Raper, Jr., United States Attorney for the District of Wyoming, and the Defendants appearing by their attorneys, Ellery, Gray & Hickey of Cheyenne, Wyoming, the Court hearing the arguments of counsel and after consideration of the same and being fully advised in the premises,

It Is Therefore Hereby Ordered that the Motion for New Trial of Defendants John C. Arp and Mildred K. Arp be and is hereby overruled.

To all of which the Defendants excepted, which exceptions are by the Court allowed.

Dated this 20th day of August, 1956.

A. Sherman Christenson
Judge, Assigned

Filed Aug. 20, 1956.

126] Notice Of Appeal.

Notice Is Hereby Given to the United States of America, appellee, that John C. Arp and Mildred K. Arp, two of the defendants above named and appellants, hereby appeal to the United States Court of Appeals for the Tenth Circuit from the final judgment entered in this action on July 25, 1956.

Ellery, Gray & Hickey
By: Norman B. Gray
Attorneys for Appellants,
John C. Arp and Mildred K. Arp

Filed Oct. 18, 1956.

[An appeal bond was filed October 18, 1956.]

131] Statement Of Points On Appeal.

The points upon which appellants will rely on this appeal are:

1. The Complaint For Condemnation filed herein on August 25, 1955, is a supplemental complaint in Docket No. 2901 Civil, filed without authority of the court or consent and is not for the purpose of aiding or effectuating the prior judgment entered December 22, 1943, and the Order entered November 28, 1945, but, on the contrary, seeks entirely new and different relief than that sought in the Petition filed October 21, 1943, and fixed by the judgment and order aforesaid. Consequently the court acted in excess of jurisdiction and without authority when it entered the judgment dated July 25, 1955, granting new and different relief and erred in so doing.

2. The court erred in striking the amended separate answer of appellants.

3. The court erred in denying appellants motion for leave to amend their amended separate answer by adding a "Fourth" defense in order to tender the issue that on and after January 17, 1955, the Housing Commissioner was without authority to do anything more than remove the temporary improvements from the lands of appellants "by demolition or otherwise."

132] 4. The court erred in denying motion of appellants to file their supplemental answer.

5. The court erred in permitting the appellee to introduce into evidence the price paid by appellants for some 667 acres of land in October, 1952, which included the 30.89 acres here involved and appellants were prejudiced thereby.

6. The court erred in permitting the witness Black to testify as to the price paid by him for the lands in Leisher-Black Addition and appellants were prejudiced thereby.

7. The court erred in permitting appellee to introduce into evidence the sale price of lots in Rose Ella Addition and appellants were prejudiced thereby.

8. The verdict of the jury is not sustained by substantial evidence and is contrary to the evidence.

9. The court erred in entering judgment upon the verdict and said judgment is contrary to law.

10. The court erred in refusing to grant a new trial.

Ellery, Gray & Hickey
By: Norman B. Gray
Attorneys for Appellants,
John C. Arp and Mildred K. Arp.

Filed Oct. 19, 1956.

[Transcript of Trial Proceedings.]

Transcript of evidence on trial of the above entitled action before The Honorable A. Sherman Christenson, Judge, and a Jury, on July 10, 11, 12, 13, 1956.

Appearances: For the Government: Mr. John F. Raper, Jr. United States Attorney, District of Wyoming. Mr. James McFeely, Field Office Attorney, Public Housing Administration. For the Defendants: Mr. J. J. Hickey and Mr. Norman B. Gray of Ellery, Gray & Hickey, Mr. C. E. Lane.

2] The Court: This is the time set for trial in Case No. 2901 Civil, United States of America, Petitioner, vs. Certain Parcels of Land in the City of Cheyenne, Wyoming; Maud B. Van Tassell; City of Cheyenne, a Municipal Corporation, and Board of County Commissioners, Laramie, Wyoming. I think there is also another party, John C. Arp and Mildred K. Arp and Children's Hospital Association, a Colorado Corporation. Is the plaintiff ready?

Mr. Raper: The plaintiff is ready, Your Honor.

The Court: And the defendant?

Mr. Hickey: Defendant is ready, Your Honor.

* * * * *

(A Jury was duly empanelled and sworn.)

The Court: The Jury is in the box, counsel are present. At this stage, ladies and gentlemen, the parties have the right to present opening arguments of evidence which they intend to introduce or facts which they intend to prove. The Court has determined that on the question of value the burden of proof is upon the defendant or defendants and therefore they will have the opening, after which the Government may make its opening statement or may reserve it until the defendants' testimony is completed. You may proceed.

(At bench:)

3] Mr. Raper: At this time the defendant would like to reserve for the record its objection to the order of trial proceeding with the defendant carrying the burden of evidence. Now one thing I would like to ask the Court now, does the preponderance of proof go along with --

The Court: It goes along with the burden of proof.

Mr. Raper: All right, sir. The ground for our objection is that the normal and usual course is for the plaintiff or the initiator of the suit to present its case, followed by that of the defendant wholly, with rebuttal to the plaintiff, and that is in accordance with the Federal Rules of Civil Procedure.

The Court: I take it, Mr. Hickey, that it is in line with your request that you have the opening and assume the burden of proof.

Mr. Hickey: Yes, Your Honor, we assume the burden of proof.

Mr. Raper: All right, sir, that's fine.

The Court: You may proceed.

4] (To Jury:)

(Mr. Hickey made an opening statement on behalf of the defendants.)

Mr. Raper: The Government reserves its opening statement.

The Court: Very well. You may call your first witness.

(Defendants' Exhibits Nos. A to H, inclusive, were marked for identification.)

RALPH E. HELMER, called as a witness on behalf of the defendants, testified:

Direct Examination by Mr. Hickey:

Q. Will you state your name, please? A. Ralph E. Helmer.

Q. Where do you live, Mr. Helmer? A. 905 Richardson Court, Cheyenne, Wyoming.

Q. And how long have you resided here? A. In Cheyenne? Or --

Q. In Cheyenne. A. Nine years this month.

Q. Are you employed at the present time? A. I am employed at the Mountain States Telephone and Telegraph Company.

Q. What is the nature of your employment? A. I'm a draftsman, equipment draftsman.

5] Q. Now, have you had some special training in the field of drafting? A. Well, I've taken drafting in school for three years and after leaving school I had approximately nine months with the City Engineer's Office in Cheyenne and then the rest of my experience since the last part of December has been with the Telephone Company.

Q. What particular school did you study drafting?

A. Cheyenne Senior High School.

Q. And after you graduated from high school and completed your drafting course there, you worked for the City Engineer? A. Yes, sir.

Q. Of the City of Cheyenne? A. Yes, sir.

Q. And what was the nature of your work with him?

A. Drafting, I would say chiefly, and then I did some -- well, work in the field, field work.

Q. Now in the course of your employment do you have anything to do with making reproductions of maps? A. Yes.

Q. How much of your employment was assigned to that?

A. Well, most of the time that I was with the City, other than the first -- I would say two months I did that type of work on and off. It wasn't every day that I did that type of work, but all during the course, I did.

Q. Are you acquainted with what is known in and about Cheyenne as Interior Heights? A. Yes, I am.

Q. And are you acquainted with what is known and has
6] been designated as the Dellinger or Atlantis project in and about Cheyenne? A. Yes, sir.

Q. And are you acquainted with what is known and designated as Leisher-Black addition? A. Yes.

Q. Now did you at the request of Mr. and Mrs. Arp and their counsel prepare a map for them? A. I did.

Q. And what does that map purport to be? A. That map is a plat of Interior Heights and Leisher-Black and, well, Van Tassell is -- Van Tassell is in there too. It would be -- well, it shows Mr. Berger's, the Dellinger, and I believe that's -- and all the streets, of course.

Q. Now, what did you use as a basis for the preparation of this? A. I used plats from the city, the filings in the County Clerk's Office and photostats of these various plats and -- well, I believe that's it.

Q. Did you make notes as you examined the records of the office of the City Engineer and the County Clerk?

A. Yes, I did.

Q. And did you use those notes to assist you in the preparation? A. I did.

Q. I hand you herewith what has been marked for purposes of identification Defendants' Exhibit A, and if you will take the bottom of it, and ask you to state whether or not you recognize this particular exhibit?

A. I recognize this exhibit as my work.

Q. And is this exhibit prepared in accordance with the testimony you have just given? A. Yes.

7] Q. Did you prepare it to scale? A. Yes, I did. It's one inch equals one-hundred feet.

Q. And does it contain the entire plat of Interior Heights? A. Yes, it does.

Q. And does it contain the entire Leisher-Black plat?

A. All of Leisher-Black.

Q. And does it contain the entire area which was known as the Atlantis project? A. Yes.

Q. And does it contain the entire area of the Van Tassell Terrace project? A. Yes, it does.

Q. Now will you explain to the Court and Jury how the three projects that I have just mentioned to you are cross-hatched or prepared so that they can be readily identified from any other part of the Interior Heights?

A. All right. The green cross-hatch on the right-hand side, to my right, is Leisher-Black addition to the city. The red cross-hatch, which is immediately in front of Mr. Hickey (indicating) is Van Tassell. The large -- the cross-hatch with the spaces, the large spaces to my left (indicating) is the Dellinger or Berger holdings in Interior Heights, and the rest -- this is all Interior Heights that is not cross-hatched.

8] The Court: Can the Jury clearly hear the witness? It might help if you would keep your voice up.

Witness: Yes, sir.

Mr. Hickey: We offer Defendants' Exhibit A in evidence, Your Honor.

Mr.Raper: I wonder if we could lay this on the table so that we could compare it with ours.

The Court: I am wondering, Mr. Raper, if to save time of comparison now, subject to any corrections you might put in evidence, it can't be received pro forma.

Mr. Raper: That would be perfectly agreeable, Your Honor. We don't want to interfere with the use of this map at this time.

The Court: Very well.

Mr. Raper: Although we do feel that perhaps the original County Records would be the best evidence.

The Court: It might be, but I think it's fair for you to show any departures, if there are any.

Mr.Raper: Yes, that's right.

The Court: The exhibit is received in evidence.

Q. Now, Mr. Helmer, do you recall the date that the Interior Heights was platted, the date it was platted?

A. The original Interior Heights -- I -- in the 1890s. I do not remember the exact date.

9] Q. Now I call your attention to one line that is on the exhibit which is a heavy black line and goes diagonally through Block 48, Block 71, Block 70, Block 69, and down to a point between Block 83 and 84 and then diagonally up through Block 67, 55 and so forth. What is the reason for that heavy line? A. That is the City Limits' line of Cheyenne, Wyoming.

Q. As established by whom? A. That's the latest City Limits' map, surveyed, I imagine by the city, and the Dodge survey, I believe is part of that, and that includes within the City of Cheyenne is Leisher-Black there, and that other upper part of the map is within the City Limits.

Q. Do you know when Leisher-Black was taken in the city?

A. Well, that date would be in 195 -- I won't say on that, either '53 or '54, I believe.

Q. Now will you identify the locations while the map is there? What is the top part? A. The cross-hatch in red at the very top is Van Tassell Terrace. The cross-hatch on the left-hand side of the map, that's your Dellinger, and at my right-hand side of the map in the green cross-hatch is Leisher-Black addition.

Q. Would you identify it as to north, south, east and west? A. The upper part of the map is north. My left would be west. My right would be east and the lower part of the map towards the floor would be south.

10] Mr. Hickey: May it please the Court, it was indicated this morning that the map of the City of Cheyenne might be offered in evidence.

(Defendants' Exhibit I was marked for identification.)

Q. I hand you herewith what has been marked Defendants' Exhibit I and ask you to examine it and from your experience in the City Engineer's Office and your examination of the lots, state what it is. A. This is a city map of Cheyenne, Wyoming.

Q. Is this the most recent map of record in the office of the City Engineer? A. I believe this is. This is the most recent one I have seen.

Q. Could you examine it and tell us whether or not there have been any changes made between the date of this map, which I believe is January, 1955, and August 25, 1955?

A. Yes. There has been a change right here (indicating), a street in the northern --

Q. When you say "right here" identify that on the map, please. A. It would be Block 11 and 12, Blocks 11 and 12.

Q. In what addition? A. In Interior Heights. There is a street called Van Tassell Court which now -- which goes through 11 and 12 and cuts the block -- each block into two sections.

Q. Do you know of any other changes? A. No, that's 11] all I see right now.

Q. Is that change reflected on your map of Interior Heights? A. Yes, it is. It's on Block 11 and 12, that street to the upper left-hand side. It is the curved street in there.

Q. Designated as Van Tassell Court? A. Van Tassell Court.

Q. And that is the only change you know of on the city map? A. Yes, that's right.

Q. Do you know when that change was made? A. Last -- last year -- no, it would be this year, 1956.

Q. In the year 1956. Do you know what month?

A. It would be the earlier part of the year, because that street is there now and there is now traffic going through that street.

Mr. Hickey: We offer Defendants' Exhibit I.

The Court: Any objection?

Mr. Raper: No objection, Your Honor.

The Court: Received.

Mr. Hickey: May we put this on the board, please? Can the Jury see this map all right or would it be better if it were square with you? Can everybody see it?

The Court: It could be turned a little more, Mr. Hickey. It might help the Jury. I can still see it.

Q. Now, Mr. Helmer, I wonder if you would -- can you

from the city map that has been put on the board locate the Interior Heights portion of the city? A. The Interior Heights would be --

12] The Court: You may leave the chair.

Q. I hand you herewith a pencil. I wonder if you could go to the blackboard and outline on that map the area which you have set out as Exhibit A. A. This is the area (indicating) enclosed within this red, and Block 175 would be in this corner there (indicating) and that would correspond, of course, right here (indicating).

Q. Son, will you speak up so everyone can hear you, please? A. All the land within this red -- my red line here, is what is on this map. Block 175, of course, down there (indicating) is right here (indicating). And this city map does not show all of these blocks to the south of-- of Block 63, 64 and so forth, south of Leisher-Black addition to the city, and of course here is the City Limits coming along here (indicating) and then going at a diagonal up to your Leisher-Black, which is this right here (indicating). That is the green-hatch over there. And then it includes within the City Limits the Leisher-Black. Then it goes north diagonally again to take the rest of the city within bounds.

Q. Well now, you have outlined in red the area, have you, that is indicated by Exhibit A? A. Yes, I have.

Q. And where is that located with regard to north, south, east and west of the City of Cheyenne?

A. Well, this is north, of course this is west, east
13] and south (indicating). It would be the southwest part of Cheyenne here. Of course all of Interior Heights is not within the City of Cheyenne. Much of it is south and west of the city.

Q. Is the Van Tassell area within the City Limits of Cheyenne? A. Yes, all of the Van Tassell area is within Cheyenne. As you can see the City Limits run here and everything --

The Court: Avoid repetition if you can.

A. And this is within that part.

Q. Very well. Will you take the stand again, please. With regard to the railroad tracks as shown on the map of the City of Cheyenne, is the subject land and -- where is it located?

A. It would be located south of the railroad lands. South.

Q. Of the railroad tracks? A. Of the railroad tracks.

Q. As they pass through the City of Cheyenne?

A. As they pass -- the railroad tracks do not pass through directly east and west. They come -- well, at that part they do not. They go more from the north, that is, travelling west they go from the north diagonally toward -- well, they go south and west, travelling west.

Q. And this land is located south? A. South.

Mr.Hickey: You may inquire.

Mr. Raper: No questions, Your Honor.

14] The Court: You may step down.

HUGH BATES, Called as a witness on behalf of the defendants, testified:-

Direct Examination by Mr. Hickey:

Q. Will you state your name, please, sir? A. Hugh Bates.

Q. And where do you live, Mr. Bates? A. I reside at 2321 Van Lennen.

Q. In the City of Cheyenne? A. In the City of Cheyenne.

Q. Wyoming? A. Right.

Q. How long have you resided here? A. I lived here two or three years prior to 1945. Then I went in the army, then came back here in -- no, I'll take that back. I lived here in 1940 in the service and then left in '41 and came back in '45 and I have resided here since then.

Q. What is the nature of your business? A. I am a Portrait and Commercial Photographer.

Q. And how long have you been so engaged?

A. For nine years.

Q. And are you engaged in that business in the City of Cheyenne? A. Yes, sir.

Q. How long have you been so engaged? A. Since 1947,

15] October, 1947.

Q. In the course of your business as photographer, have you made aerial photographs? A. We have.

Q. And on how many occasions have you made aerial photographs? A. Oh, fifteen to twenty times.

Q. And how are they made, if you please?

A. Well, with the access of an airplane we have to fly and shoot them from the air.

Q. Who shoots the pictures? A. I do the shooting of the pictures.

Q. And is there someone who operates the plane other than yourself? A. Yes, I usually engage a pilot, commercial —

Q. So your attention is directed solely to the photograph? A. That's right.

Q. Now are you acquainted with the area of South Cheyenne that is known as the Interior Heights area?

A. No, sir, I'm not.

Q. Are you acquainted with the area that is known as the Van Tassell Terrace area? A. Yes, sir, I am well acquainted.

Q. And are you acquainted with the area that is known as the Atlantis or Berger project area? A. I know where it is.

Q. And are you acquainted with the Leisher-Black area?

16] A. Yes, I know about where it is.

Q. Have you had occasion to take some pictures of these various areas? A. Well, for no other -- none other than for Mr. Black recently.

Q. Mr. Black?. A. I mean -- I'm sorry. Mr. Gray.

Q. You were requested by Mr. Norman Gray, who is counsel in this case, to take some pictures of the area, is that correct? A. Yes, sir.

Q. When were you requested to do that? A. On July the 2nd.

Q. And did you take those pictures? A. Yes, sir.

Q. And you took them in the fashion just described?

A. That's right.

Q. Now prior to that had you made any pictures of this area? A. Yes, I had.

Q. When? A. Oh, on various occasions. Some I took back as late as '53. 1953 I covered the entire city with one photograph.

Q. I hand you herewith what has been marked Defendants' Exhibit B and ask you to examine it and state whether or not you recognize that. A. I recognize that picture because I shot it and the picture came from my negative file.

17] Q. When did you shoot it? A. I shot it in June of 1953.

Q. And was that at the request of any one involved in this law suit? A. No, sir, it wasn't.

Q. Do you recognize on that photograph the Van Tassell area? A. Yes, I do.

Q. Would you be able to outline it with this red grease pencil? A. Yes.

Q. If you'll just draw a red line around the Van Tassell area.

(Witness draws on exhibit.)

Q. Now that exhibit that you have in your hand was taken by you, is that correct? A. Yes, sir.

Q. And it was taken in the manner you have described?

A. Right.

Q. And does it portray the area as you saw it at that time? A. It does, sir.

Q. On June or January the 12th? A. June.

Q. June 12th -- 1953. A. 1953.

Q. 1953.

18] Mr. Hickey: With the Court's indulgence, I'll let counsel examine it and then offer it.

The Court: If you know you're going to offer it, Mr. Hickey, it might save time to offer it forthwith and when counsel get ready to make their objection it might cut it shorter and then you can complete your examination. You offer Exhibit B in evidence?

Mr. Hickey: I will offer Exhibit B in evidence, Your Honor.

Mr. Raper: I see no objection to this, Your Honor, as long as it's clearly understood --

The Court: Received. You state whether you have an objection or not and never mind the reason.

Mr. Hickey: May I pass it to the Jury or not, Your Honor?

The Court: I wonder if you could put in the other photographs and pass them along at the same time. I don't

think we should be showing the Jury photographs while we are receiving evidence, so we will suspend.

Mr. Hickey: Very well. Thank you.

Q. I hand you herewith what has been marked for identification Defendants' Exhibit C. State what it is.
A. This is an aerial photograph of a portion of Cheyenne which includes the Van Tassell Terrace.
Q. When was it taken? A. On July 2, 1956.
Q. And by whom? A. By myself.
19] Q. Does it portray the actual visual area as you saw it at that time? A. Well, as factual as a photographic reproduction can make it.
Q. Do you recognize Van Tassell Terrace on that picture? A. I do.
Q. Will you take this red grease pencil and outline the area?

(Witness draws on exhibit.)

Mr. Hickey: We offer Exhibit C in evidence, Your Honor.

Mr. Raper: I would just like to ask one question of counsel and that is what the purpose of this is, inasmuch as it is several months past the date of taking. I think it should be clarified as to any changes that took place between August 25, 1955, and the time when this photograph was taken.

The Court: If this witness knows. Of course they can't do it all at once.

Mr. Raper: Yes, I appreciate that.

The Court: I think it's proper inquiry.

Q. You have been a resident of the City of Cheyenne for a period of nine years. Examining Exhibit C, could you state whether or not that is in the same condition as it was on August 25, 1955, or have there been any changes since that time, if you know? A. I don't know, sir.

Mr. Hickey: Very well.

The Court: Subject to being connected up, would you have any objection?

20] Mr. Raper: No, subject to being connected, Your Honor. Perhaps we could move to strike it if it seems appropriate later on.

The Court: Very well, Defendants' Exhibit C is received in evidence.

Q. I hand you herewith what has been marked for identification Defendants' Exhibit D. State, if you will, what that is. A. This is an aerial photo taken by myself.

Q. When? A. On July 2, 1956.

Q. What does it purport to portray? A. Well, the area of Van Tassell Terrace and its proximity to Cheyenne.

Q. Anything further? A. No.

Q. Can you take the grease pencil and outline the area known as Van Tassell Terrace?

(Witness draws on exhibit.)

Mr. Hickey: We offer Exhibit D.

Mr. Raper: Subject to later objections, Your Honor, or motion to strike, we would have no objection.

The Court: Very well, Defendants' Exhibit D is received in evidence.

Q. I hand you what has been marked for identification Defendants' Exhibit E and ask you to examine it and state what it is. A. This is an aerial photo of a portion of Cheyenne taken by myself.

21] Q. What particular portion, please? A. Well, this is the south portion of Cheyenne.

Q. And when was it taken? A. July the 2nd, 1956.

Q. Does it portray what you saw at that time?

A. It does, sir.

Q. Would you take your pencil and outline in red the area known as Van Tassell Terrace?

(Witness draws on exhibit.)

Mr. Hickey: We offer Exhibit E.

Mr. Raper: Subject to the same objection to be raised at some later time.

The Court: The exhibit is received in evidence. That's Defendants' Exhibit E.

Mr. Hickey: You may examine.

Mr. Raper: We have no questions.

Mr. Hickey: Thank you, Mr. Bates.

Witness Excused.

The Court: Mr. Hickey, if it's convenient in your order of proof, before you exhibit these exhibits to the Jury you might call someone to simply indicate whether there were any changes between the critical date and the date of these later photographs.

Mr. Hickey: I think my next witness can do that.

22 The Court: Very well then, you may exhibit the exhibits to the Jury if the evidence is proper.

Mr. Hickey: Very well. We will call Mr. John Arp, the owner.

JOHN C. ARP, one of the defendants, appearing as a witness on behalf of the defendants, testified:

Direct Examination by Mr. Hickey:

Q. Will you state your name, please? A. My name is John C. Arp.

Q. And where do you live, Mr. Arp? A. I live at 1000 West 16th Street.

Q. How long have you lived there? A. I've lived here -- I was born and raised here in Cheyenne sixty-six years ago and lived this entire time of my life with the exception of the time I spent with the American Expeditionary Forces over in France in World War No. 1.

Q. Now you have been a resident of Cheyenne then all during your lifetime with the exception of that one period?

A. That's right.

Q. Now are you acquainted -- do you own property in Cheyenne? A. Yes, I own a lot of property in Cheyenne.

Q. Particularly, do you own the area that is shown on Exhibit A which is cross-hatched in red and has the Leisher-Black area and the Van Tassell Terrace area and is known as the Interior Heights area -- do you own some land in that area? A. I do.

23] Q. What land do you own, sir? A. Well, I own practically all of Interior Heights.

Q. With the exception of the Leisher-Black --

A. With the exception of the Leisher-Black and --

Q. Atlantis? A. Atlantis, yes.

Q. Which you formerly owned? A. I did own that at one time, yes.

Q. And with the exception of Van Tassell Terrace which has been taken from you? A. Yes, that's right.

Q. Now what other lands do you own in and about Cheyenne generally? A. Well, partial ownership --

Q. Now if you will speak up to the Jury.

A. Well, partial ownership of --

Q. You and Mrs. Arp? A. We own -- well, we own the Guest Ranch Motor Hotel and The Sands Motor Hotel and The Indian Village Motor Hotel. I own some property on Carey Avenue, an apartment house on Carey Avenue. I own the Arp Hotel Building in Cheyenne. I am a part-owner of the property known on Seventeenth Street as the Newberry Block, Skaggs Drug Company. Let's see, I own a filling station south of Cheyenne on Fourth and Central. I own -- I'm a partial owner of ten-thousand acres of land adjacent to the City of Cheyenne. It butts right up to the City of Cheyenne.

24] Q. Now, Mr. Arp, when did you begin acquiring this property? A. I began acquiring property right after World War I, after I was --

Q. When you returned to the City of Cheyenne after World War I, you began acquiring property? A. I did.

Q. And now some of the property was acquired by virtue of inheritance, was it? A. Some of it was by virtue of inheritance. Other was property that I purchased and bought myself. On this --

Q. Could you tell us what you purchased and bought youself? A. The first piece of property I bought was a

dwelling out on Thirtieth and Cribbon. I don't remember how long I kept it. I kept it a few years and then I purchased the -- about in the year of '25 I purchased the business property of the Windsor Hotel.

The Court: Mr. Hickey, I take it this goes to his qualifications?

Mr. Hickey: Yes, Your Honor.

The Court: I think if we go through the history of acquisition on other property in too much detail, it would be improper. So if you can shorten it consistent with your obligation to show qualification.

25] Mr. Hickey: Well, I understand the rule to be, Your Honor, that the owner is entitled to show his experience in Real Estate in the particular area --

The Court: Yes.

Mr. Hickey: To substantiate his particular conclusion as to the value of the property.

The Court: I only suggest that because I could see we could take up a great deal of time if we deal with each acquisition too much in detail.

Mr. Hickey: Yes.

Q. If you will merely state, Mr. Arp, the property you acquired and the approximate date, if you can.

A. All right. I acquired -- I built and operated four hotels in Cheyenne.

Q. Yes, sir. During the last, let's say twenty-five years. A. That's right.

Q. And any other commercial property? A. Well, of course I acquired and was instrumental and part-owner of all this business property down here on Seventeenth Street and of course the filling station I acquired in South Cheyenne on Fourth and Central.

Q. To the Jury, if you will speak to the Jury, please, Mr. Arp. Now, Mr. Arp, are you acquainted with the particular area known as Interior Heights? A. Yes, I am.

26] Q. And as the owner of that property, did you make some sales of it? A. I made -- yes, I made two sales of it -- two sales of it, I believe, yes.

Q. I hand you herewith what has been marked for identification Defendants' Exhibit F. I ask you to examine it and state whether or not it is a copy of the original instrument entered into by you.

A. Yes, it is.

Q. And between you and whom? A. The Atlantis Corporation and myself.

Q. When was that entered into? A. It was entered in on the 27th day of May, 1954.

Q. And between you and Mrs. Arp and who else?

A. Mr. Gayle Dellinger and the Atlantis Development Company.

Q. And where is it with regard -- where was that sale with regard to the map? A. Well, it was adjacent to Van Tassell acres.

Q. Is it contiguous with Van Tassell acres?

A. Yes, it's contiguous with Van Tassell acres.

Q. And how many lots or blocks approximately did it contain? A. How many lots?

Q. What is its description? A. Well, the description is -- you want me to step over there?

Q. Yes, if you will, please. A. Well, it was Blocks 28, 29, 30, 31, 34, 35, 36 and 37.

Q. As shown on the map of Interior? A. Yes, sir.

Q. And this is a true copy of the original agreement,
27] is it? A. Yes, sir.

Mr. Hickey: We offer Exhibit F in evidence, Your Honor. I realize, Your Honor, that it is subject to -- not the best evidence, and I ask leave to put a copy of the actual instrument in.

The Court: We'll see if counsel will waive the objection as being not the best evidence.

Q. I hand you herewith what has been marked Defendants' Exhibit G, Mr. Arp, and ask you to state whether or not you recognize that. A. I do recognize this exhibit.

Q. And what is that, sir? A. Well, it's an exhibit of additional lots we added to this contract that we -- the original contract.

Q. It was the second sale of property in that area?
A. Yes, uh-hmm.
Q. And what lots did it cover, Mr. Arp?
A. Well, it contained Blocks 11, 12, 13, 14, 56, 57, 58, 59, 62 63, 64, 65 and 66 of Interior Heights.
Q. Now is that immediately adjacent to the Van Tassell Terrace? A. Yes, it is.
Q. And is some of it contiguous with it?
A. I believe, that is continguous, yes.

28] Mr. Hickey: We offer Exhibit No. G, Your Honor, a copy of the original which we submit to counsel.

Q. I hand you herewith, Mr. Arp, what has been marked Defendants' Exhibit H and ask you to examine it and state what it is. A. I have examined this and this is authentic.
Q. What is it? A. It's a sale of Block 45, consisting of Blocks 23 -- or 1 to 23 and Lots 26 to 48 in Block 45.
Q. Of Interior Heights? A. Of Interior Heights.
Q. And is it in the adjacent area of the Van Tassell Terrace? A. Yes, it is.
Q. And that is the original agreement?
A. That's the original agreement.
Q. When was it entered into? A. It was entered on the 8th day of September, 1954.
Q. And between you and whom? A. Joseph J. Cousins and myself.

Mr. Hickey: We offer Exhibit No. H. We offer the exhibit, Your Honor.

The Court: Do you have any objections, Mr. Raper?

Mr. Raper: I have no objection, Your Honor.

The Court: The Exhibits F, G and H are received in evidence.

Mr. Raper: That's to the two agreements with Dellinger. With respect to Defendants' Exhibit No. H, I think that we should object to the introduction into evidence of this until there is some proof that this agreement was consummated.

29] The Court: Well, I understood he said it was a sale.

Mr. Raper: It's an agreement for a sale, Your Honor.

Mr. Hickey: Would the Court like to examine it?

Mr. Raper: I think there is a difference.

Mr. Hickey: It's an executed agreement of sale.

The Court: Has this sale been completed, Mr. Arp?

Witness: Not completely. Partially.

The Court: What part?

Witness: There were two lots completed. The sale of two lots were completed.

The Court: Out of the total purchase price of $19,550.00, how much has actually been paid?

Witness: $1700.00.

The Court: And is the contract still in force?

Witness: As far as I am concerned, the contract is still in force.

Mr. Hickey: We submit it was at the time of taking, whether it is now or not, You Honor.

The Court: Well, I'll receive it for whatever it may be worth.

Mr. Hickey: Thank you, Your Honor.

Q. Now, Mr. Arp, I would like to hand you-- just a moment, I will withdraw that question. Mr. Arp, are you familiar with the condition of the lands of the area in the Interior Heights? A. Yes, I am.
30] Q. You have been there many times? A. Many, many times.

Q. And are you familiar with the area with regard to the specific dates of August 25, 1955? A. August 25, 1955. Yes, I am.

Q. And any time subsequent to that? A. Yes, I am.

Q. I hand you herewith what has been marked Defendants' Exhibit C, an aerial photograph, and ask you to examine that.

A. I have examined it.

Q. And state whether or not you recognize Interior Heights, or recognize Van Tassell Terrace. A. I do.

Q. And do you recognize the Berger addition?

A. I do.

Q. And do you recognize the Leisher-Black?

A. The what?

Q. Leisher-Black. A. Yes. I -- I do.

Q. Well now, does that portray, Mr. Arp, the area as it appeared on August 25, 1955? A. It does.

Q. Have there been any changes? A. Not any changes at all, material changes. Not to amount to anything.

31] Q. Well, what changes -- A. There aren't any changes.

Q. I hand you herewith what has been marked Defendants' Exhibit D and ask you to examine it. A. I did.

Q. And do you recognize the three areas? A. Yes, I do.

Q. Have there been any material changes since August 25 -- A. There has not.

Q. I hand you herewith Defendants' Exhibit E and ask you to examine it. A. I have.

Q. State whether or not there have been any material changes since August 25. A. No changes at all.

Mr. Hickey: Thank you. Your Honor, I submit that.

The Court: The exhibits have been received. They may be exhibited to the Jury if this is a convenient time. Do you wish to hand them to the Jury now?

Mr. Hickey: I think they might want to examine them as Mr. Arp testifies, Your Honor.

The Court: Well, I won't permit them to have them while he testifies, because they have to pay attention to his testimony.

32] Mr. Hickey: Very well, Your Honor.

The Court: You may pass them now to the Jury. I suppose the dates are indicated on the back.

Mr. Hickey: Sir, I don't believe they are except on the one taken in 1953.

The Court: Very well. The others were taken the same day?

Mr. Hickey: The others were taken July 2, 1956. The darker is the older photograph taken in '53. The Defendants' Exhibit C is the photo taken on July 2 of this year, as were D and E. Outlined in red is the subject lands.

(The Jury examines exhibits.)

Q. Now, Mr. Arp, we will confine our testimony exclusively to the Van Tassell Terrace area from this point on. In your opinion, what is the best use of the land which underlies the Van Tassell Terrace area? A. The best and most useful use it can be put to is for multi-housing units.

Q. When you say multi-housing units, would you define that a little? A. I would define it for the same kind of units that the Government is using it for now.

Q. And that is a number of living quarters within one structure? A. That's right.

Q. Approximately three living quarters in each structure? A. Yes, sir.

33] Q. Now when did you first recognize it as being valuable for multi-housing? A. I recognized it right after they built it.

Q. Right after they built it? A. Right after they built it, I realized -- well, I realized that it would be -- that it was very good piece of property for multi-unit dwellings.

Q. Now when was that? A. That was in about '44.

Q. And what particularly made you recognize its adaptability for that use in 1944? A. Because I recognized it as a very stiff competitor for my Sands Motel and my Indian Village Motel.

Q. Now at the time in 1944 when this multiple housing was going in, when it was being erected, do you know what consideration was given for erecting multiple housing at that particular spot? A. Well, I'll tell you. The housing people at that time, after I had built -- my Indian Village had been completed at that time, they came to me and I had -- well, I had just been operating my Indian Village Motor Court for I think about a year. They came to me and

wanted to know if I would like to dispose of it for dwellings for the units of the Government.
34] Q. Multi-housing? A. Multi-housing units. They also knew that I owned the land east of the Indian Village, that block east of the Indian Village, and there was a vacant lot in back of the Indian Village Motor Court that they also thought that I owned. The housing people came to me and asked me if I would like to get rid of it, and they wanted to know how much land I had and I told them how much land I had and what would be available to them and they said, "Well, Mr. Arp, it isn't enough, it isn't large enough for what we want to use it for." They wanted to know if I knew of any other ground that was available for the purpose that they put Van Tassell to. I thought and thought and thought and I had this ranch down south of town, I suggested to them that they go down there and put their units on that. They advised me that that was too far east of town, that it wasn't adjacent to the Union Pacific shops or it wasn't available -- the ground wasn't -- it wasn't suitable for that particular purpose because it wasn't near enough to the Union Pacific shops, Fort Russell and the Wyatt Manufacturing Company. So I told them that I knew of this other place --

Mr.Raper: Just a second. Your Honor, I wonder what this has to do with our present valuation of this property. This is a conversation that took place way back in 1944. It looks pretty remote.

Mr. Hickey: Your Honor, we submit it for this reason, and I think it's important to us for this purpose. We want to show that the highest and best use of that property was recognized in 1944, before the Government actually acquired it and that Mr. Arp directed them there for that purpose.

35] Mr. Raper: Then, too, I think, Your Honor, it's subject to the further objection that this conversation is not pinned down as to what Government agent Mr. Arp is talking to and on what date and place.

The Court: It does seem to me that no proper foundation has been laid. I'll permit the answer to stand thus far and I will expect time and place and persons present to be established. There is some doubt in my mind as to whether you can go beyond having Mr. Arp give his judgment on the

property. I don't suppose you are relying upon any admission. Very well, the answer may stand so far. You may proceed.

Q. Now, you recognize that Van Tassell is suitable for multi-dwelling and that's its highest and best use?

A. That's right.

Q. Now then, Mr. Arp, do you know what it has been used for and how long? A. It has been used by the Government since its erection, I believe, in '44 until the present time.

Q. And it is currently being used -- A. Being used as a multi-unit dwelling.

Q. Now, Mr. Arp, if the land had remained yours, if the Government had not take it from you, what did you intend to use it for? A. I intended to use it for that very purpose.

Mr. Raper: Now, just a second. Your Honor --

The Court: Just a moment.

36] Mr. Raper: I think probably what he intended to use it for is a conclusion, it is conjecture, it's after the fact and I don't believe properly admissible. It's self-serving.

The Court: I believe on one phase of the case it may have a bearing. Objection overruled.

Q. Go ahead, Mr. Arp, what did you intend to use it for?

The Court: He already answered the question. I don't think he needed to repeat it.

A. I had intended to use it --

The Court: Just a minute, if you would read the answer.

Mr. Hickey: I wonder if you would read the answer back, Miss Johnson.

(The answer was read by the reporter.)

Mr. Raper: It's been answered.

Mr. Hickey: Very well, Your Honor. The objection

started and I didn't hear it.

The Court: Very well.

Q. Now, can you state, Mr. Arp, whether or not the Van Tassell Terrace is within the City Limits of the City of Cheyenne? A. It's in the old Dodge survey. It's in the City Limits of Cheyenne.

Q. Very well. Now, Mr. Arp, are you familiar with the city water lines and gas lines in that area?

A. Fairly well.

Q. Can you state whether or not the utility lines and power lines are adjacent to the Van Tassell?

A. Yes, they are.

37] Q. And where are they, if you please, Mr. Arp?

A. They run down on Snyder.

Q. And is that contiguous with the Van Tassell Terrace?

A. Yes, it is.

Q. And those are city lines, are they?

A. Yes, they are.

Q. And how adjacent is the Van Tassell area to the center of the City of Cheyenne? A. It is very close to the City Limits -- or to the city business district. And it's also close to the refinery, the shops -- it's well suited for multi-dwelling housing units.

Q. Mr. Arp, are you acquainted with the Mayor and City Council of the City of Cheyenne? A. Yes, I am.

Q. Do you know whether or not they have expressed a stand with regard to the use of this property?

Mr. Raper: Now just a moment, Your Honor, I don't believe that's proper. I think it's apparent it's hearsay and the best evidence would be any resolution or ordinance.

The Court: Sustained.

Q. Now, Mr. Arp, considering particularly the area that you own in the Interior Heights District, have you received any particular offers from a willing buyer, other than the contracts which have been put in evidence?

A. I have received numerous offers for property, people that wanted to buy right in there.

Q. Have there been any church groups seek --

38] A. Yes.

Mr. Raper: Now just a moment, Your Honor. I can't see that an offer to buy is proper evidence in value. I think that the cases will bear us out that the only evidence of value is actually consummated sales and any offers to buy do not prove value.

The Court: I'll permit you to renew the offer at a later time. I believe I must sustain the objection at this time.

Mr. Hickey: May I submit to the Court my purpose at this time? It's on the use, Your Honor. I think we can properly show the prospective uses of the property. That's what I am attempting to do.

The Court: Are you going to attempt to show price offered?

Mr. Hickey: No, Your Honor.

The Court: I will change my ruling, if that's the purpose.

Mr. Hickey: No price at all.

The Court: And permit you to show he has had offers.

Mr. Hickey: Very well.

Q. Were there any churches? A. I have had offers for the Millers Super Market Company.

Q. Any churches, please, Mr. Arp? A. Yes.

Q. What church? A. The Methodist Church.

39] Q. And when? A. About two years ago.

Q. And state, if you will, designate the area on the map where they were interested. A. They were interested right adjacent to Van Tassell Acres.

Q. Now what other offer did you have?

A. I have offers from the Millers Super Market people. They wanted to build a super market right there at the Van Tassell Acres.

Q. And -- A. I had offers from Mr. Milt Mason to build a drive-in--

Mr. Raper: Just a moment, Your Honor.

The Court: I think you're going beyond what you should go. I am willing to have him testify, if it be a fact, that he has had offers for people interested in using it for what he claims to be the highest and best use. I do not think it is proper to go into any detail as to who has made the offer or for what further purpose.

Q. You have had other offers besides the ones just testified to? A. I have.

The Court: And with reference to any-- the specific identity of the offerors, the testimony will be stricken. The Jury is instructed to disregard them.

40] Q. Now, Mr. Arp, considering the Van Tassell Terrace area, could you point out to us the arteries or the roads that are most accessible to the City of Cheyenne Business District? A. Well, it's Snyder Avenue. Snyder Avenue is probably the best street and there was talk of the city extending Snyder Avenue clear down to Orchard Valley.

Q. Yes, sir. Now where is Snyder Avenue with relation to Van Tassell Terrace? A. It bounds Van Tassell Acres on the east side.

Q. On the east side. And now where is it a main artery to? A. It's a main artery to the City of Cheyenne and also to the Orchard Valley Road.

Q. Now, Mr. Arp, having regard to your experience in the Real Estate business in the City of Cheyenne and your various sales, do you have an opinion of the value of the property upon which Van Tassell Terrace is located?

The Court: You can answer that yes or no. Do you have an opinion?

A. Yes.

Q. What is that value? A. That value is two hundred-thousand dollars.

Mr. Hickey: You may inquire.

Cross-Examination by Mr. Raper:

Q. Mr. Arp, are you acquainted with the ownership of

Van Tassell Terrace in 1944 when it was first used as a housing project? A. Am I acquainted with whom?

Q. The ownership at that time, in 1944.

41] A. Yes, I am.

Q. Who was the owner? A. I believe it was Mrs. Maud Van Tassell.

Q. Do you know what happened to Maud Van Tassell?

A. Yes, I do.

Q. And what happened to her? A. What do you mean -- when did it happen to her?

Q. What happened to Maud Van Tassell. A. Well, she died.

Q. Do you know what happened to Interior Heights after she died? A. Yes, I know. The Government condemned her property.

Q. After she died or before she died? A. Before she died.

Q. But what happened to Interior Heights after she died?

Mr. Hickey: Your Honor, I object to this line of examination in that it isn't proper cross-examination and in that it seems to be remote and has no bearing upon the issues. That was objected to by counsel when I was examining.

The Court: I don't know what the purpose is yet. I might suppose that it might be proper. Are you going to pursue that matter any further?

Mr. Raper: Not very far. I just want to get some background on this property leading up to the date Mr. Arp acquired it.

The Court: You may be opening up something Mr. Hickey can go into, but proceed if you think it's competent and relevant.

42] Q. Now do you know who the owner of this property was prior to your taking title to it? A. Who owned the property prior --

Q. Yes, who owned the property prior to your taking title to it. A. Well, Mrs. Van Tassell.

Q. Well, no, didn't the Children's Hospital of Denver, Colorado own it? A. Oh, yes, they owned it. Mrs. Van Tassell willed the property to the Children's Home, in Denver.

Q. And then you acquired it from the Children's Home --
A. Yes, that's right.
Q. Of Denver, Colorado. Now when did you acquire that property from them? A. I acquired the Van Tassell property, bought it from the Children's Home in '52.
Q. 1952? A. 1952.
Q. That was the latter part of the year, was it, that you acquired it? A. I believe it was in, sometime in November -- I'm not sure, I think it was in November.
Q. Yes. Now at the time you acquired the property, did you know it was subject to a condemnation action in this United States District Court? A. I only thought of acquiring--
my main object in acquiring Van Tassell Acres was to
43] protect myself from having very bad competition in the line of a competitor for a motor court.
Q. Well now, that wasn't the answer to my question, Mr. Arp. We must have missed each other somewhere. Did you know at the time you acquired Interior Heights that Van Tassell Terrace, a part of Interior Heights, was subject to --
A. I can't say whether I did or I didn't. I don't know, I don't remember.
Q. Do you recall receiving a deed from the Children's Hospital Association on the 10th of December, 1952?
A. Do I recall what?
Q. Receiving a deed from the Children's Hospital Association in December of 1952. A. I remember of it, yes.
Q. And do you recall that that deed transferred the land to John C. Arp and Mildred K. Arp? Now you are the same John C. Arp? A. Yes, uh-hmm.
Q. Do you recall that deed having a provision in it to this effect: "Together with all rights, title and interest of the grantee, in and to the property known as Van Tassell Terrace, consisting of lands subject to an action in eminent domain in the District Court of the United States for the District of Wyoming."
A. Mr. Raper, I never saw the deed.
Q. You didn't? A. I didn't see the deed until not over
44] a month ago. I didn't see the deed. I only signed the contract to purchase the deed. When we received the deed I was in Panama, and I didn't see the deed -- the deed was kept in my counsel's safety deposit box and I never saw it.
Q. Did you ever inquire? A. I never inquired. I knew I had the title to the land, there was no reason to inquire

about it. I never saw the deed.

Q. All right, sir, now how much land did you receive by that deed? A. As near as I can tell, I think there was 667 acres.

Q. A total of 667 acres and that included the Van Tassell Terrace? A. Yes.

Q. The 30.89 -- A. Uh-hmm.

Q. Acres. Now was there any development at all out there at that time, at the time you acquired it the latter part of 1952? A. Yes, there was.

Q. What development was there? A. The Leisher-Black, I believe. Now I'm not sure about that, but the Leisher-Black had started about -- the Leisher-Black had started about -- well, while I was gone. I was gone about six months.

Q. Well, as a matter of fact the Leisher-Black subdivision didn't start until sometime in 1953. A. Well, I don't know, but I think that's when it started.

Q. But the land was all vacant as far as any house
45] was concerned out there except for Van Tassell Terrace, isn't that so? A. Well, Van Tassell Terrace and Leisher-Black. I don't remember exactly about that, but they had started on their project and there were houses out on Leisher-Black's addition before he started.

Q. Before he subdivided it? A. Yes.

Q. There was one house out there, wasn't there?

A. One or two, I don't remember which.

Q. Well now, you have expressed an opinion here that the highest and best use for this particular land right here is for multiple housing. That's your opinion, is it?

A. That's correct.

Q. Now let's assume, Mr. Arp, that the multiple housing that is now on there was not present and there was only vacant land. Now what use would you think would be the best for that property? A. I still think it would be -- the reason that I think it would be the best use for that would be multiple housing dwelling is because of its location. It is located between the Union Pacific shops, the refinery down here, Wyatt Manufacturing Company and Fort Warren or the air base, rather.

Q. All right, sir, now you own other lands out in that same area that you haven't disposed of. Here is a piece of land that I am embracing with this pencil here, going round and round on Defendants' Exhibit No. A (indicating), would that be suitable for multiple dwelling use?

46] A. It would be not near as much as the site that's being used at the present time for multiple housing development.

Q. Why wouldn't this be just as suitable?

A. It would be, but it's further out. It's not adjacent to Wyatt Manufacturing Company, the Union Pacific shops. The place you have your pencil pointed is Snyder Avenue, and that leads directly to the city, within a quarter of a mile of the heart of the city.

Mr. Hickey: Your Honor, may I interrupt for the purpose of any cross-examination, I would ask the Court to ask counsel when he points to a location on the map to designate it by lot or block.

The Court: It would be better.

Mr. Raper: All right, sir, it will probably make the record clearer.

Q. All right, sir, I have my pencil here on the corner of Block 24 of Interior Heights addition. That's just immediately south, that's only across the street from the Van Tassell Terrace. Why wouldn't that be suitable for multiple dwelling units?

The Court: When you say that, you mean the place where your pencil was pointing. Show what you are indicating on the map in a general way.

Mr. Raper: All right, sir.

Q. In the equivalent area, Block 24, 25, 26 and 27 just south of Van Tassell, wouldn't that area be just as suitable? A. Mr. Raper, it would not.

Q. Well, it's just right across the street.

47] A. It's even -- the furthest part of Van Tassell, where you had the pencil pointed, is not as well suited as that part that lies north of there.

Q. What's the difference? A. There is a great deal of difference because it's alot closer to the business district in Cheyenne.

Q. Well, another block or block and a half.

A. Those blocks will make a long distance.

Q. They are about six-hundred feet, is that right?
A. That's a long distance, yes.
Q. All right, do you own Blocks 19, 20, 21,22, 23, 46, 45, 44, 43 and 42 also? A. I practically own all of them. There are a few lots in there I don't own.
Q. That area is just immediately across the street from Snyder Avenue and across the street from Van Tassell. Now wouldn't that be suitable for multiple dwelling use?
A. Not as well as the other because this is -- Snyder Street is a through street to the business district of Cheyenne.
Q. Well now, Mr. Arp, Blocks 23 and 42 open on to --
A. 23 might be, but those others ones where you had your pencil pointing weren't.
Q. Isn't this Snyder Avenue? A. Snyder Avenue all the way down there, but that part is closer to the city, where Van Tassell Acres is.
Q. All right now, it's just right across the street
48] from Van Tassell though, isn't it? A. Block 23 is, yes, but not those other blocks.
Q. Well, it's right in the immediate vicinity. All right now, let's go on down here to Blocks 89, 88, 87, 86 and 85, 96, 95, 94, 93 and 92. Now wouldn't that land be suitable for multiple dwelling use? A. Not near, Mr. Raper, as that part that -- up there at Van Tassell Acres. Not near.
Q. Well now, is there an access road out here?
A. There is an access road, yes. There is a road that goes clear around it, but you're going clear out of your way. Why go a mile and a half out of your way when you can go right down Snyder Avenue to the business district.
Q. You know where the viaduct is, don't you?
A. Yes, the viaduct is way east of there.
Q. Isn't it approximately the same distance from the viaduct let's say, around to Fourth Street as it is to take Snyder from the viaduct around to Fourth Street over by the Van Tassell Terrace? A. Mr. Raper, the most direct route is just from Block 18 and those ones on top of it are the closest to the city business district.
Q. Do you know the character of this road here?
49] A. I know it very well.
Q. Is it paved? A. It's paved -- now, not all of it is paved, no.

The Court: Which road?

Mr. Raper: Excuse me. Snyder Street, Your Honor.

A. It runs into 85 and 87 truck route right down there just below Van Tassell.

Q. This is still a gravelled street? A. That's a gravelled street, but it's -- that doesn't matter whether it's gravelled or not, it's still the closest to the business district.

Q. All right, sir, are you acquainted with the county road just west of your development, let's say, west of Blocks 8, 11, 31, 34, 59, 62, 89, and 92? A. I am very well acquainted with it.

Q. That's hard-surfaced? A. It has only been hard-surfaced very recently.

Q. Was that hard-surfaced on August 25, 1955?

A. I couldn't say.

Q. You don't know that for sure? A. I don't know.

Q. Now we can go over here to this map now, Defendants' Exhibit No. I. I have the pencil pointing to the viaduct just north of Van Tassell Terrace, don't I? Isn't that right -- I mean the underpass, excuse me.

A. I was going to say it looked to me like the underpass.

50] Q. Yes, the underpass. It's approximately the same distance around to Fourth Street, isn't it, to Van Tassell as it is around the County Road that encircles that area? A. I never measured that, but I know the closest street to the very heart of the business district is Snyder Avenue.

Q. All right, sir, now going back to our original assumption that the Van Tassell Terrace buildings now standing on approximately an area of Blocks 15, 16, 17, 18, weren't there. Do you think that that property would be worth or would be suitable for use for low cost housing?

A. That would be its lowest use.

Q. The lowest use? A. That would be its lowest, yes, the very lowest use it could be put to, is individual single unit dwellings.

Q. Now isn't that what kind of dwellings are over here just immediately west of Van Tassell Terrace? Aren't those all low cost housings? A. Yes, they are.

Q. How many houses are over these, do you know?

A. I would say approximately -- I would say approximately

235 or 240 and each one of those houses that was built over there increased the value of my Van Tassell Acres immeasurably.

Q. All right, sir, now just tell me though, you say that there is something over 200 houses over there.

A. I think so. I'm not sure.

51] Q. And those have been built in the last three years? A. Yes.

Q. Well, somebody then thought that was a pretty good use for -- A. Sure, they did.

Q. (Continuing) -- land out in this area?

A. Sure, they did. You bet they did.

Q. And that use would be just as good right in here, wouldn't it? A. This here particular piece of ground known as Van Tassell Acres is particularly adapted to multi-unit dwelling units. That's what it was absolutely used for in the first place and it's still by far the very best use that you can put that thing to, is multi-unit dwellings.

Q. How many acres did you acquire out here in all?

A. 667 acres.

Q. Well, how much of it do you have left approximately in acres? A. I don't know.

Q. Well, let's say forty -- eighty -- a hundred -- let's say that you have disposed of maybe a hundred acres of it. What would that leave you? Around five-hundred acres, six-hundred acres? A. Well, possibly. Something like that. I wouldn't attempt to guess.

Q. Well, isn't there a spot somewhere on that five or six-hundred acres that would be just as good for multiple dwellings as this one here? A. There isn't.

Q. It just takes that one spot? A. It takes that
52] particular spot because of its location between those three industries that I told you.

Q. Now, there was a contract came into evidence here called Defendants' Exhibit No. H between John C. Arp and Mildred K. Arp and Joseph J. Cousins. I hand that to you. Who was Joseph J. Counsins? A. He was a small building contractor here in town.

Q. Now I believe that you had testified that he had only paid $1700.00 on that contract.

A. He had agreed to purchase -- he had agreed to purchase those forty-eight lots.

Q. Do you know where Mr. Cousins is now?

A. I do not. I think he's around town.

Q. All right, now there have been some payments due since he paid that $1700.00, isn't that true?

A. Mr. Cousins purchased the two lots from me and that's all he purchased, but he did have a contract to purchase more.

Q. Two? This says Block 45, consisting of Lot 1 to 23 and Lots 26 to 48. That looks like almost a whole block. Is that a whole block? A. Pretty near, not quite.

Q. Now he has only paid you $1700.00 on that?

A. Yes.

53] Q. And he is in default as to the rest of the contract?

Mr. Hickey: Just a moment. Your Honor, I object to the line of examination because I think that the material part of this contract is whether or not he was in default at the date of taking, which is August 25, 1955. If he wasn't in default at that time, I think that that is the time. Whether he is in default since that time or not has no bearing on the issues.

The Court: Overruled. I think you can wait until he replies to the question. Pardon me, Mr. Raper, will you be some minutes -- It's about time for our recess.

* * * * *

Q. You are the same John Arp who was testifying just preceding the Court's taking a recess? A. Yes, sir.

Q. Mr. Arp, I think we were talking about this contract that you had with Joseph Cousins. Did Joseph Cousins actually pay you in cash $1700.00 --

A. Yes, he did.

Q. On that contract? Have you re-taken the property under the contract in view of his default? Have you re-possessed it? A. He has never defaulted that contract.

54] Q. You say he has not? A. That contract is still invoked.

Q. This contract was entered into on the 8th of September, 1954? A. Uh-hmm.

Q. And he paid you $1700.00 then on it?

A. He didn't pay -- he paid $1700.00 for two lots.

Q. All right, sir, and then I note that there is a

provision in here the balance on or before one year from the date of this instrument? A. It is, that's right, but as far as I'm concerned that contract is still invoked.

Q. Are you acquainted with Mr. Cousins' present financial situation and his situation that existed back around in August of 1954? A. I believe I am, yes.

Q. He's been adjudicated bankrupt, hasn't he?

A. Yes, I think he has been.

Q. All right, sir, now you are a pretty good businessman, Mr. Arp, what kind of a businessman was Mr. Cousins?

Mr. Hickey: I object, Your Honor, I don't know what bearing this has on the issues.

The Court: The objection to the question as framed is sustained.

Mr. Raper: Thank you, sir.

55] Q. All right, sir, now you have stated that the best use of this land here is for multiple dwelling. Is there any difference between the value of raw land upon which would be placed multiple dwellings and the value of raw land upon which would be placed single dwelling homes?

Mr. Hickey: Object on the grounds it's an improper hypothetical question, Your Honor.

Mr. Raper: I think he has set himself up here as an expert on values.

The Court: I believe, Mr. Raper, that might be a little difficult to understand. The value of property for its highest and best use is the same, no matter what other use is made of it. It might be different for some other use. I believe I will ask you to re-frame the question.

Q. Well now, you state that the value of this land for multiple dwelling units is $200,000. That's your statement? A. Yes. $200,000 or over.

Q. $200,000 over? A. Uh-hmm.

Q. All right, now what do you think its value would be for single dwelling houses similar to the establishment that has been set up just west of Van Tassell?

A. Only that single housing units are of the lowest value as far as the best use and value of any ground, a single housing unit is the lowest value of any of them.

Q. Well, what is that difference in value in your
56] estimation? A. I can't answer that question.

Q. Well, don't you know how much that land would be worth if it was to be used for low cost housing development or the development of an area where single dwellings would be constructed?

Mr. Hickey: Your Honor, I object to this line of examination on the grounds he has given his answer as to what his thought of the market value is and I believe that under the rules of law it's improper to attempt to show it for particular uses what the values are.

The Court: Well, this is cross-examination. The law, as I will tell the Jury, is that the property owner is entitled to the value of the property for its highest and best use. He has, though, assumed to testify either by reason of his ownership or as an expert as to the values and it might be proper -- I think it is proper to ask you to assume just for the sake of the question that the property couldn't be used for what he says is its highest and best use and could be used only for low cost housing, does he have a judgment as to its value. That isn't material to the issue as to the highest and best use, but I will receive it for such light as it may throw on the weight of his opinion as an expert.

Mr. Raper: All right, sir. I wonder if the reporter could read the question.

57] The Court: Upon which you have the exception, and I will ask Mr. Arp, just assuming for the purpose of this question, Mr. Arp, that this property could not be used for its highest and best use as you defined it, but could be used for low cost housing, do you have a judgment as to what its reasonable market value would be for the latter purpose? You can answer that yes or no, if you have a judgment.

Witness: I do have.

The Court: And you may state what that judgment is.

Witness: I think that is probably low -- the single unit dwelling, I would say that that -- that it would be worth about -- just kind of guessing at it --

The Court: Well, do you have a judgment? I am not asking for your guess. Your best judgment.

Witness: Between $4,000 and $4,500 an acre.

Q. Between four-thousand dollars and --
A. I'd say forty-five hundred dollars an acre.
Q. All right, sir. That would be $135,000 then? That's figuring just thirty acres. There would be another forty five-hundred dollars. About one hundred forty five-thousand dollars, is that right? A. I imagine that would be about right.
Q. Now you sold you to Mr. Dellinger forty acres of land in here. That would be Blocks 28, 29, 30, 31, 37, 36, 35 and 34 for eighty-thousand dollars, isn't that correct?
A. That's right.
58] Q. And you sold him the -- all of Block 13 and half of Block 14 also, isn't that correct? A. That's right.
Q. And how much did you sell him that block and a half for? A. I don't know the exact figures, but it was at a higher figure. I don't remember exactly. The reason it was sold at a higher figure is because --
Q. Now I didn't ask you the reason. That would be the west half of Block 14 and all of Block 13, that would have been for about eighteen-thousand dollars?
A. I think so, I think that's about --
Q. Do you know how many acres there are in a block, in a block in Interior Heights addition?

(No response.)

Q. Aren't there about 4.5 blocks out there in one of those blocks? A. I think so, yes.

The Court: You say a block in a block. You mean an acre in a block?

Q. The number of acres in a block. A. Little over four, yes, something like that.
Q. Closer to ten, isn't it? About ten acres to a block?

Let me check this thing here. Here is one, two, three, four, five, six, seven, eight blocks, and in eight blocks there are forty acres. That would be five acres to a block.

A. Approximately, yes, I said.

59] Q. Eight blocks, five acres in a block. All right, sir. So that there would be seven and one half acres, isn't that right? So seven and one half times $4500.00, the valuation that you now place on that would be up around -- in excess of thirty-thousand dollars. Now that's almost reaching twice the amount that you sold the similar land to Mr. Dellinger for, isn't that --

A. Mr. Dellinger and -- he bought both of those lots. He's the only one that bought those lots.

Q. Well, he paid approximately two-thousand dollars an acre for Blocks 28, 29, 30, 31, 37, 36, 35 and 34, isn't that right? A. That's right, yes, sir.

Q. And this amounts to somewhere around twenty four-hundred dollars an acre. A. You figured it. I think it would amount to more, yes.

Q. So his purchase of it is worth less than you say that that land is worth. Is that right?

A. Well, as we -- as I sold that development out there, those -- that land to the Atlantis Refinery, I sold it -- I sold that land to him and I knew if I continued to sell him more blocks that it would naturally increase the value of the ground and it has. I sold -- the first blocks that I sold him were at a lower price than those that I sold him later.

Q. But there was only a four-hundred dollar difference over a period of about seven months, isn't that right, per acre? A. I think so, yes, something like that.

Q. All right, now I would be interested in knowing,

60] Mr. Arp, how you arrived at that figure of $200,000 as your valuation on that land? Just how did you reach that? A. Because of the fact that as those houses were built and developed, the Atlantis Company and those of the Leisher-Black addition, they have increased the value of that ground immeasurably.

Q. Well now, let's take the Leisher-Black addition. And lots up there are selling for around $1250.00.

A. And more.

Q. Well, how much more? A. Well, I've been told -- this is hearsay -- I have a personal interest in those lots out there. I have been told that they have sold as high as fifteen-hundred dollars.

Q. Well now, you know that that sale of fifteen-hundred dollars is not a net figure to the seller, don't you? A. I realize that.

Q. You understand that there has to be a cost of development? A. That's right.

Q. That is, someone has to pay for the sewer and the water -- A. That's right.

Q. And curb and gutter. A. That's right.

Q. And the sidewalks. A. That's right.

Q. And the grading and the leveling and all of those things. So that before you could get down to raw land value, you've got to deduct all of those expenses, haven't you.

A. That's right.

61] Q. Do you know what the prevailing rate for development of a lot is in this community? A. The prevailing rate when Mr. Leisher--when Black and when he first started his development was a lot less than what it is now. I would say $350.00 a lot.

Q. Cost of development? A. Yes.

Q. Well, as a matter of fact would you disagree if the average cost of development in this community was six-hundred dollars? A. Well, six-hundred dollars would be a tremendous price.

Q. Do you know what the cost of development was over in Interior Heights, that work done by Mr. Dellinger?

A. Yes, I do. I have an idea. I haven't the exact figures but I have an idea. I would say that they were around about four-hundred dollars.

Q. About four-hundred dollars. All right, sir. Now I'd like to ask you just how you computed that two hundred-thousand dollars. What did you use as a base to arrive at that? A. The base of that would -- the base of the two hundred-thousand dollars and over was for multi-housing units.

Q. No, no, that isn't -- I'm afraid you misunderstood me, Mr. Arp. Did you use a unit of so much an acre?

A. I think -- yes, I would say so much an acre, yes.

62] Q. How much an acre did you figure that land was in there? A. Well, I would say about -- well, you can figure it out for yourself, there's thirty acres in there, thirty-one acres.

Q. Thirty-one acres. That would be something over six thousand dollars an acre. Does that sound about right to you? A. According to that figure, but mind you, I didn't

say that I would take that. I didn't say I would take two hundred-thousand dollars for the site that Van Tassell sits on. I wouldn't take, and I would be an unwilling seller for $300,000 or $350,000 at the present site that Van Tassell sits on.

Q. Well then, your figure of two hundred-thousand dollars is somewhat prejudiced by your position as a party in this case, isn't it, Mr. Arp? A. Well, I wouldn't say it's prejudiced in view of the location of the property. The property is the most valuable piece of ground and it's the only piece of ground that's available for development in the City of Cheyenne. There are no other parts. I know the town well, I was born and raised here. I was -- I know that there are no other developments. I own practically all the ground south of town.

Q. And in all that ground that you own south of town, there is not a single place where a multi-dwelling unit could be -- A. It isn't comparable, Mr. Raper, as the one Van Tassell sits on.

63] Q. It has to be pin-pointed down to the particular one. A. It has, because the Government Officers chose that --

Q. Now just a moment, I think you answered the question. You mentioned the Wyatt Manufacturing Company would provide some of the tenants for some of the housing, is that right?

A. That's right. They did during the war.

Q. I'm talking back in August of 1955.

A. I wouldn't say in August, 1955, but I know they provided quite a number -- in fact, a great deal of the tenants in Van Tassell Acres when it was built.

Q. How many people were employed by them in August of 1955? A. I don't know.

Q. As a matter of fact, don't you know that they only employed about forty people there? A. That might be so, I don't have any idea, but I know they employed a lot more during the war.

Q. And that's really a small number of employees for an industrial establishment, isn't it? A. But forty, in a great number -- about twice that many or perhaps three times that many during the war --

Q. I am talking about August 25, 1955, Mr. Arp.

A. Well, I said I didn't know how many they employed.

Q. That really wouldn't cover it too much then in 1955 in August. A. I wouldn't say, but it was chosen -- when they built it for that very reason.

64] Q. All right, now do you know where the Wyatt Manufacturing Company is located? A. Yes, I do.

Q. Can you locate it on this map here? A. Can't see too good, but it's right about over in here somewhere (indicating.)

Q. Over in here. Clear out on Lincoln Highway on Highway 30? A. Yes. I'll tell you, it was right on the very City Limits.

Q. I see. Then how far would that be -- about three miles out there? A. Oh, my, no. Look, here is the corner of Van Tassell. I would say it would be about a quarter of a mile.

Q. Quarter of a mile. You have to come over here and go under this underpass, don't you? A. Well, yes, I guess they would, but that would still make it only about a quarter of a mile.

Q. All right. Do you know the principal ways of comparing values to arrive at the value of a particular piece of ground? A. I know that multi-unit dwellings is by far the most valuable.

Q. Well now, that isn't the question. Do you know the methods that are followed to arrive at land values, the various methods that are used by people who appraise lands? A. No, I don't.

Q. You don't know that there is a comparative method --

Mr. Hickey: I object on the ground it's been asked and answered. Seems to me he is cluttering the record. He says he doesn't know.

65] The Court: Seems that it's been answered.

Mr. Raper: All right. I think you're right, Your Honor.

Q. You say you bought this property the latter part of 1952, was it, in December? A. Which property is that?

Q. The Interior Heights. A. What date was that?

Q. In December of 1952. A. Yes, sir.

Q. How much did you pay for it at that time, Mr. Arp?

Mr. Hickey: That's objected to, Your Honor, and that's probably a matter that we would like to argue to the Court. I don't know whether it would be prejudicial to argue it

before the Jury.

The Court: I think it should be argued to the Court. Do you have some redirect examination?

Mr. Hickey: About four questions.

The Court: Will counsel come to the bench?

(At bench:)

The Court: Do you have any authority on any point other than the question of remoteness?

Mr. Hickey: The question of remoteness and the change in the conditions of the area so that it has no bearing on the value.

66] The Court: Well, does that appear at this time?

Mr. Hickey: I think it does, Your Honor.

The Court: Since 1952?

Mr. Hickey: Yes, Your Honor.

The Court: Of course that would apply -- the change would apply to a lesser or greater degree at any date other than the particular date.

Mr. Hickey: Well, we have the one further objection, Your Honor, that the cost was of the entire area. There is no cost of just the thirty acres. The thirty acres was included in the six-hundred eighty-seven acre sale. He has testified to that. Now when he asked about the thirty acres, he wants him to break out of this six-hundred eighty-seven acres one portion of it --

The Court: There might have been a question there, Mr. Raper. Do you have any authority?

Mr. Raper: Well, yes, we have a case here, International Paper Company vs. United States, 5th Circuit, 227 Fed. 2d 201.

The Court: Miss Johnson, I believe now we have the position of the parties in the record and unless you gentlemen want this to go further in the record, it wouldn't seem necessary --

Mr. Raper: Well, I would like to say this, Your Honor, that evidence or testimony as to the price paid by an owner defendant is admissible as one of the elements to be considered by the Jury in arriving at their opinion, where it's admitted that for the purpose of aiding them with definite, intelligent opinion, not as proof that the original purchase price was a fair market value. In other words, we are not introducing this as any evidence of what the fair market price is now but as something to be considered by the expert when he determines what land values were at that time and bringing them up to date.

67] The Court: I appreciate that. I am not bothered by that phase. I am bothered by the phase that Mr. Hickey mentions, that the price wasn't segregated with reference to this particular tract and it's apparent that in a large tract there would be land more valuable than others, whether we are inviting error by letting something come in --

Mr. Raper: Well, that's true --

Mr. Gray: And this further thought, Your Honor. I understand the photographs, that the character has changed tremendously since the purchase.

The Court: Well, that could always be shown, but we are faced with something here that is almost an impossibility --

Mr. Raper: That might be a problem to bring it out.

The Court: (Continuing) -- to segregate, I am afraid you would be inviting error to bring it in. I am convinced that it would be possible to get it in for some purpose but I'm very dubious about it. I think I would have to think about that overnight.

Mr. Raper: Well, that would be fine, Judge.

The Court: Let's go on as far as we can, if you want to renew the question a little later --

68] Mr. Hickey: I'll object --

The Court: You'll object and I will have to make a ruling. I will think about it and you think about it.

(To Jury:)

Mr. Raper: Does the Court wish to rule on the objection?

The Court: Do you wish to press for a ruling at this time?

Mr. Raper: No, sir, I won't.

The Court: I understand that the question is withdrawn, to be renewed tomorrow if you are so advised.

Mr. Raper: Well, rather than calling Mr. Arp back to the witness stand, let's have the question asked and if the Court -- I think it would be preferable for the Court to rule on it at this time.

The Court: All right, I will sustain the objection on the ground, among other things, that no sufficient foundation has been laid as to comparability.

Mr. Raper: No further questions, Your Honor.

Redirect Examination by Mr. Hickey:

Q. Mr. Arp, in the beginning of Mr. Raper's direct examination, he asked you, I believe, if you knew any reason why Lots 24, 25, and 26 would not be useable for multi-dwelling. Now do you know any reason why it wouldn't be?

A. Well, you mean for other purposes?

Q. Yes, sir. Maybe I can help you this way. What is the nature of the topography of the land in 24, 25, 26?

A. 25 is a kind of mud wallow -- not a mud wallow, kind
69] of a deep--kind of a buffalo wallow, a place where the water--well, it's sunken down in there and it's kind of a hollow, it's down in kind of a valley or a -- in plainer words, it's low ground.

Q. Yes, sir. A. It's low ground and --

Q. Now that's all right, just answer my question. Now

do you know of any governmental agency who particularly wants 24, 25, and 26 of your own knowledge?

Mr. Raper: Now just a second, Your Honor, I think that's objectionable. There is no concluded transaction of any sort. I don't think it has any bearing in this case.

The Court: Objection sustained. I don't think he would be presumed to know what all the governmental agencies might or might not do.

Mr. Hickey: Perhaps I will phrase the question another way, but I think it's been opened up by examination.

The Court: The objection to the question is sustained.

Mr. Hickey: Thank you, Your Honor.

Q. Were you contacted by the School Board of the City of Cheyenne for land in Blocks 24, 25, and 26?

Mr. Raper: Now I make the same objection, Your Honor. There could be all kinds of negotiations pending that have no bearing on the subject here. I can't see that that makes any difference to us.

70] The Court: Sustained. I believe, Mr. Hickey, that in view of the cross-examination I will permit you to inquire whether he was contacted by the Public Housing Administration in regard to these other lots. He started to answer that a moment ago, but I think the objection is sustained to the last question.

Mr. Hickey: Very well.

Q. Did the Public Housing ever contact you with regard to any of these other lots?

Mr. Raper: Same objection.

A. Never did.

The Court: Overruled. Answer may stand.

Q. Now, Mr. Arp, you were also questioned, on cross-examination about the lots which are designated as 23, 22, 21, 20, 19, 42, 43, 44, 45, 46. I ask you to take Exhibit D, if you can, and locate them there on that exhibit.

The Court: Do you want to make a record of it by perhaps a green pencil?

Mr. Hickey: No, I merely want him --

The Court: For his own information?

Mr. Hickey: I merely want him to use that to refresh his recollection in the picture.

The Court: Very well.

Q. Now using that exhibit and looking at the terrain of that land which constitutes these acres, would you tell the Court and Jury why they would not be conducive to the same use as Van Tassell Terrace is? A. Because of the fact that they are hilly and the same as 25 and 40 and 53. The school district wanted to --

71] The Court: Now, Mr. Arp, I ruled on that question. Just answer the question Mr. Hickey has asked you.

Witness: Oh. May I ask what question you asked me?

Q. Mr. Raper asked you in the first instance why this tier of lots and blocks in Blocks 19 to 23 and Blocks 46 to 42 were not as conducive to the use for multi-housing as the lots contained in the Van Tassell area.

A. Well, partly for the reason that they have houses on them.

Q. There are some houses on that property?

A. Yes, there are.

Q. And that is evidence in the picture? A. Yes, it is.

Q. And are those single dwellings? A. Some of them may be and some of them are probably -- maybe duplexes, but they are mostly all single dwelling houses.

Q. Now, Mr. Arp, in your cross-examination with regard to the purchase of Mr. Cousins in the lot or block, I believe 40 -- A. 45.

Q. 45. Which is one of the lots contained in the area

Mr. Raper was talking about -- A. Yes, sir.

Q. You have in the record said that two lots were
72] sold, now could you tell me what the lots are with regard to the block here? Are they twenty-five or fifty foot lots? A. They are fifty foot lots by one-hundred twenty-five.

Q. There are two lots sold to Mr. Cousins that are fifty by one-hundred twenty-five? A. (Nods affirmatively.)

Q. Now the lots as they are platted on there, are they twenty-five or fifty foot lots? A. They are twenty-five foot lots.

Q. Well then, according to the plat, your testimony would be that there are four twenty-five foot lots that were paid for by Mr. Cousins? A. That's right.

Q. Rather than two. Now Mr. Arp, Mr. Raper paid considerable attention to the fact that your first sale was sold for two-thousand dollars, your next sale for twenty four-hundred dollars. Now your first sale was approximately when? A. It was in -- let me think. It was two years ago.

Q. I hand you herewith, Mr. Arp, for purposes of refreshing your recollection, Exhibits Nos. F and G. Will you examine them and tell me if Exhibit No. F is the evidence of the first sale? A. Yes, it is.

Q. And when was that date? A. That is dated the 27th of May, 1954.

Q. And the 27th day of May, 1954 was the first sale?
73] A. That's right.

Q. Which was for two-thousand dollars an acre?

A. That's right.

Q. Now the second sale which embraced the lots pointed to by Mr. Raper -- A. Yes.

Q. When was that? A. That was October 19, 1954.

Q. Now that's approximately four or five months later. A. Five months later.

Q. Mr. Raper indicated seven months. That's why I wanted -- that was at an increased price?

A. That was an increased price.

Q. Of twenty four-hundred dollars? A. Yes.

Q. Now then, you feel that the development of the first area within four months increased the value of the land four-hundred dollars? A. That's right.

Q. And do you feel that because of purchase No. 1 and purchase No. 2 and the subsequent purchases and buildings that the land has continued to increase? A. It has.

Q. And what is the situation with regard to future and further development of the area? A. Every structure that's put on that -- every structure that's put on Interior Heights increases the value of the ground.

74] Mr. Hickey: That's all.

Recross-Examination by Mr. Raper:

Q. I believe, Mr. Arp, when I originally questioned you, I asked you if you owned Blocks 19, 20, 21, 22, 23, 46, 45, 46, 43 and 42 of the Interior Heights addition. Do you own all those? A. Yes, I own those.

Q. Do you have some buildings on them?

A. I don't have buildings but other people have buildings.

Q. On your lots? A. No, I don't believe -- no, they are not, they are east of Van Tassell on -- just above 23, 22, and 24. There are buildings on there.

Q. But not on your lots? A. No, there are not.

Q. I hand you here Defendants' Exhibit No. E, which is the photograph that you were looking at and ask you to examine that further and tell me whether that shows any buildings on that section of blocks there.

A. No, I don't believe there are any buildings on there.

Q. All right. Now you say that is hilly in there?

A. Yes, there are hills there.

Q. They aren't real high, steep hills or anything like that, are they? A. Quite high, Mr. Raper. They are not high, but they are rugged, they are kind of --

75] Q. Kind of rolling in through there --

A. Yes, they are rolling hills.

Q. Modern machinery soon levels that rolling country and fills up those -- A. It would be pretty good expense.

Q. Filled up -- A. At great expense.

Q. Fills up those buffalo wallows? A. It could, at great expense, yes.

Q. Now in connection with this contract that you had with Mr. Dellinger, do you recall the date that you actually deeded the property to him? A. To Mr. Dellinger?

Q. Yes. A. There were different dates.

Q. Do you recall them? Could I --

A. Oh, no, I couldn't.

Q. Could I refresh your memory? Was Block 29 deeded to him on the 12th of August, 1954? A. If it -- if you have a record of it, it probably was.

Q. And Block 30 on the 30th of August, 1954?

A. I would imagine that's right.

Q. And then Block 31 in September of 1954. Now this is the stuff that was under the eighty-thousand dollar agreement. A. Yes, I believe you're right.

76] Q. And then in October of 1954 parts of it were -- another block was deeded. A. I think you're right.

Q. All right sir. Then as late as the 6th of January of 1955, Block 37 was -- A. But those were all under one contract.

Q. I know, but just answer my questions, please.

A. Oh.

Mr. Hickey: Your Honor, I believe Counsel has asked enough of them and I object to it. I don't know what bearing --

Mr. Raper: Getting down to the dates I am interested in, Your Honor, which are later dates.

The Court: Well, get down to them then. Overruled.

Mr. Raper: All right, sir.

Q. One of the 6th of January, 1955 --

Mr. Hickey: We object to this, Your Honor, on the further ground that the date was fixed by the contract that is in evidence, in May of 1954. The date of the deed has no bearing upon the fixing of the contract.

Mr. Raper: I think that's the consummation of the agreement.

The Court: Overruled.

Q. And then the final deed under that block was given on the 4th of February, 1955, is that right?

77] (No response.)

Q. Well, it would be about that time. I don't want to tie you down to a date because I know it's difficult to remember them, Mr. Arp.

A. I couldn't remember that.

Q. But you wouldn't have any argument with that date?

A. If you have a record of it, that's it.

Q. All right, sir. Now then, in connection with the amendment to your agreement, some of that land wasn't deeded until September of 1955, was it? A. I think probably that's right.

Q. And some of it was deeded in January of 1956?

A. Probably so.

The Court: You may have your objection to this line of examination.

Mr. Hickey: Yes, sir.

Q. All right, I think that's enough of that. Then you under this agreement also covered Blocks 58, 59, 62, 63, 64, 65 and 66, as well as 56 and 57. Some nine lots, that are located right in this area on Defendants' Exhibit A (indicating). Here is 56, 57, 58, 59, 66, 65, 64, 63 and 62. That agreement embraced those. Now have you deeded those eight blocks to Mr. --

A. Haven't deeded them, no. We haven't.

Q. You bargained that that would be the market price as far as you were concerned up into 1955 --

78] Mr. Hickey: We object to that question --

Q. (Continuing:) -- and 1956?

Mr. Hickey: And think it's improper.

The Court: Overruled.

A. I think that was the -- it was all right with me, yes.

Mr. Raper: All right, that's all.

Mr. Hickey: That's all.

The Court: Step down.

LEON E. HEBERT, called as a witness on behalf of the defendants, testified:

Direct Examination by Mr. Hickey:

Q. Will you state your name, Please? A. Leon E. Hebert.

Q. And if you will speak up, Mr. Hebert, so the Jury and the Court can hear you, speaking principally to the Jury. Where do you live, Mr. Hebert? A. 1318 East 17th, Cheyenne.

Q. How long have you lived in Cheyenne? A. Oh,
79] thirty-one, thirty-two years.

Q. And what has been your business, Mr. Hebert?

A. Real Estate and Insurance.

Q. And how long have you been in the Real Estate business in Cheyenne? A. Since 1933.

Q. And have you been a licensed broker since that time? A. I have.

Q. Have you occupied any positions with regard to the Real Estate business? A. Well, I was six years on the State Real Estate Board.

Q. You were a member of the State Real Estate Board?

A. The State Board, yes.

Q. As a member of the board, what were your duties?

A. Well, to issue licenses to applicants for brokers' licenses and for salesmen.

Q. You passed on their qualifications? A. Yes, we did, and we listened to complaint.

Q. And all during this time, did you continue as an active broker yourself? A. Oh, yes.

80] Q. And have you sold a great deal of property in the City of Cheyenne? A. Well, in the course of those years I think I had sold about three-hundred pieces of property.

Q. Now at the present time do you hold any official capacities? A. Well, I'm on the City Zoning Board, for one thing.

Q. You are currently a member of the City Zoning Board? A. That's right.

Q. Anything further that has a bearing upon Real Estate? A. Well, I used to make appraisals for the Veterans Administration and G. I. loans and a few years ago I made quite a number of appraisals for Judge Thompson's Court in settlement of estates.

Q. And all in all, you have acted as the appraiser of

real property in Cheyenne on a good many occasions?

A. Oh, yes.

Q. Now calling your attention to the area which has been designated on Defendants' Exhibit A as the Van Tassell Terrace area, being Blocks 15, 16, 17, 18 and a portion of Blocks 24, 25 and 26 and a portion of Blocks 1, 2, 3 and 4, in your capacity as a member of the Zoning Board, do you know whether or not they are zoned for any particular use? A. At the present time they are not zoned. They are really industrial sites.

Q. Would there be any objection to multi-dwelling units on that area? A. No, not a bit. They are already zoned in that way, by their right of grandfather rights because they have been there -- the multiple units have been there for ten years or better and it's automatically zoned.

81] Q. It's automatically zoned by virtue of that?

A. That's right.

Q. Now have you had some sales in the general area of that particular property? A. Oh, I've sold a few lots around there.

Q. Do you particularly recognize any that you might have sold? A. Well, it's been six or eight years. I could look them up on my records, but I couldn't tell you right off.

Q. Are you acquainted with the area generally over there? A. Oh, yes.

Q. And of what does that acquaintance consist?

A. Well, we write a lot of insurance and we have occasion to go here and there, and we have listings, we sell property. What do you mean?

Q. Do you know of sales that have been made in that area by other people? A. No, I don't.

Q. You have no knowledge of sales in that area?

A. No, I don't, outside of the sales that Mr. Arp has made to Mr. Dellinger.

Q. Do you know of any sales made by Mr. Black?

A. Yes.

Q. Then you do have a knowledge of sales made in the

82] Berger area -- A. Oh, yes.

Q. Which is contiguous? A. That's right.

Q. And you do have a knowledge of sales made in the Leisher-Black area? A. That's right, and also, if I may say, right east of there, the Tom Olsen property, he sold lots.

Q. You are acquainted with sales of lots there?

A. Yes.

Q. Well now, in your opinion as a Real Estate man, Mr. Hebert, what is the highest and best use of the area designated as the subject lands or Van Tassell Terrace?

A. Multiple units any time.

Q. You feel that the highest and best use of that particular area is multiple units? A. That's right.

Q. Now do you know of any similar sale of multi-unit property in the City of Cheyenne that is comparable to multi-unit property on that project?

A. Not definitely. I couldn't name the dates or places or amounts, but I know there is a -- there has been quite a bit of it change hands.

Q. Well, perhaps you didn't understand my question. Do you know of a multi-dwelling unit which is comparable to Van Tassell Terrace which has ever been bought or sold in the City of Cheyanne? A. You mean as to value?

Q. As to use. A. Oh, yes.

83] Q. Could you tell me what it is, sir?

A. Well, would it have to be close to that location?

Q. Any place in Cheyenne. Do you know of a particular area that has one-hundred ninety-seven or more multi-units -- A. Oh, no.

Q. That has been bought or sold in the area of Cheyenne?

A. Oh, no, that's not available.

Q. There has never been? A. No.

Q. In your years of experience? A. That's right.

Q. Now in your experience on the Zoning Board, Mr. Hebert, what can you say with regard to property which is reduced or increased to the type that will permit multi-dwelling with regard to the value of the land thereunder.

A. Multi-dwelling, in other words Zone B or Zone C would increase in value of at least one-third, of sometimes a half over so-called Zone A for single unit.

Q. Then there is considerable increase in value of multi-dwelling? A. Oh, yes, yes.

Q. Now you have a knowledge of the area generally in the Interior Heights, is that not a fact?

A. Yes, that's right.

84] Q. You have been on there many times?

A. Yes.

Q. Do you know any place in Interior Heights where there would be an equally suitable area for multi-dwelling?

A. I believe not.

Q. Why do you say that the location as it is on the map of the Van Tassell area is the most suitable for multi-dwelling? A. Because it's the most accessible to the city, close to the city. It's in the city, it's close to the shopping center and what not, where if you'd get out further it wouldn't be suitable.

Q. Now, Mr. Hebert, in the course of your operation as a member of the Zoning Board, do you have any acquaintance with an acquisition ordinance passed by the city?

A. I have a recollection of it, yes.

Q. Have you ever examined it and considered it in your business? A. I believe I have. I don't recall it right now.

(Defendants' Exhibit No. J. marked for identification.)

Q. I hand you herewith what has been marked for identification Defendants' Exhibit J and ask you to examine it, sir, and tell me whether or not you recognize it, and if you do, what it is. Or whether it's a copy of something.

A. Yes. That is an ordinance passed by the City Council to set a charge on any new raw land wanting to be taken into the City of Cheyenne.

85] Q. When was it passed, sir? A. July 25, 1955, final reading.

Q. And you recognized that as an ordinance, a copy of an ordinance of the City of Cheyenne?

A. That's right.

Mr. Hickey: We offer Exhibit J in evidence, Your Honor.

Mr. Raper: I have no doubt, Your Honor, that such an ordinance exists and I think that probably if the city records were brought over it would reveal as much. I have no objection. They could prove it by more competent evidence, but it's perfectly agreeable.

The Court: The exhibit is received. That's Exhibit I?

Mr. Hickey: J, Your Honor.

The Court: J. Very well.

Q. Having in mind the context of Exhibit J, Mr. Hebert, what in effect does it provide with regard to the acquisition of the land by the City of Cheyenne?

A. Well, you would have to pay two cents a square foot, my understanding, of all land exclusive of streets and alleys sought to be so annexed.

Q. Now paying attention to the map which is Defendants' Exhibit A, would that acquisition cost be assessed against the area where Van Tassell -- A. No, sir.

Q. It would not be? A. Not at the present time, it
86] wouldn't, no.

Q. Then your understanding is that Van Tassell is within the city? A. That's right, it's within the City Limits.

Q. And that only has application to property which is not within the city? A. That's right.

* * * * *

Q. You are the same Leon Hebert who was on the stand when the Court recessed last evening? A. I am.

87] Q. You are reminded, Mr. Hebert, that you are still under oath and are bound by the oath taken yesterday --

A. Yes, sir.

Q. (Continuing) -- in your testimony this morning. I think we had established yesterday, Mr. Hebert, that you were an active Realtor in the City of Cheyenne, had been since 1933. A. Yes, sir.

Q. And still are conducting realty transactions.

A. Yes, sir.

Q. Now, Mr. Hebert, in the course of your realty business, have you at any time near August 25, 1955, had any particular request for land similar to the Van Tassell Terrace area? A. Oh, yes.

Q. On any occasions? On more than one occasion?

A. Yes.

Q. Now what type of examination did you make pursuant to those requests? A. Well, as to location and number of acres, with the idea of fulfilling our prospective buyers' wishes.

Q. And were you called on to give them an estimate of what the cost of similarly located land would be?

A. No, but they indicated to me they were willing to pay a large price for the right spot in the right location.

Mr. Raper: Your Honor, I think probably the answer of the witness should be stricken unless there was a consummated transaction.

88] The Court: I believe that is true. And the last answer will be stricken and the Jury instructed to disregard it.

Q. Now, Mr. Hebert, have you examined the Van Tassell Terrace land with an idea in mind of setting a value on the land alone? A. I have.

Q. Did you determine at the time you examined it what its highest use in your opinion was? A. Well, either multi-dwelling units or industrial site. Either way.

Q. And you conclude that multiple dwelling is one of its highest uses? A. That's right.

Q. Now considering the fact that you are on the Zoning Board, if an application were presented to you in your capacity today or on August 25, 1955, to permit the use of the Van Tassell area for multiple dwelling, what in your opinion would be the action of the board and what would be your action?

Mr. Raper: I don't think that this witness is qualified to anticipate or conjecture what the action of a board might be, particularly when there are other members besides himself.

Mr. Hickey: I'll strike that portion.

The Court: All right.

Q. What would your action be? A. Well, I would --

89] Mr. Raper: I believe that's objectionable for the reason that his action wouldn't be binding on the other members of the board.

The Court: Well, is there an issue on the question of this availability?

Mr. Hickey: Your Honor, the only question I have is to establish the highest and best use.

The Court: He has already said that it was so zoned and could be used for multiple unit housing, as I understand.

Mr. Hickey: Thank you, Your Honor.

Q. In line with the consideration, Mr. Hebert, that you have heretofore recited, have you set a price or a value upon the land underlying Van Tassell Terrace, keeping in mind that you are not to include any of the improvements situated thereon or the developments underlying the surface?

A. Yes.

Q. And what is that value? A. I think it's worth $5875.00 per acre.

Q. And what would be a lump value of the 30.89?

A. $181,462.00.

Mr. Hickey: Thank you, Mr. Hebert. You may inquire.

Cross-Examination by Mr. Raper:

Q. Now, Mr. Hebert, you testified that this particular piece of ground is best suitable for multiple dwellings. Now what do you mean by multiple dwellings?

A. Well, single structures containing two or more
90] families.

Q. You are on the Zoning Board, are you?

A. Yes, sir.

Q. Referring back to the ordinance pertaining to zoning, with which I presume you are well acquainted, I believe that there is a definition in that ordinance of a multiple dwelling, and that ordinance says that a multiple dwelling is a building occupied by three or more families living independently of each other. Do you recall that provision of the ordinance? A. That's right. They are all under one roof, as far as that goes. An apartment house, in other words.

Q. Well, there could be two dwellings, structures, like a duplex -- would that be considered a multiple dwelling?

A. Not if they covered more than four-thousand square feet.

Q. It depends upon how much area there is then --

A. That's right.

Q. For each dwelling? A. That's right.

Q. And a multiple dwelling would anticipate three or more families? A. That's right, that would come in Class B or Class C.

Q. All right, sir, now what sort of multiple dwellings are you thinking of for the Van Tassell area?

A. Well, very much the way they are at the present time.

Q. Well now, you are then taking into consideration the fact that out there is a Government project which has multiple dwellings on it, is that correct?

91] A. That's right.

Q. Well now, here we're trying to arrive at a value of raw land out there, Mr. Hebert, and we have to take away from the consideration of this Jury the presence of those dwelling houses, those dwellings there. Now let's assume that all of the buildings are completely eliminated from that area. Let's say that you never have seen them out there before and that that land is covered with sagebrush and rocks and gravel, just like the land that adjoins it to the south and the land that adjoins it to the south and southeast, clear on down here (indicating), and let's assume that you were called upon to indicate the best use for that Van Tassell land. Just assume that that area is not there, what sort of a best use would you put on it? A. May I answer that in my own way?

Q. Answer the question. It would have to be in your own way. A. If the buildings were completely off, the land would be worth more because the buildings at the present time are worthless. It's going to take three or four-thousand dollars per unit to make it livable.

Q. Well, I don't see that's quite an answer to my question. Let's assume that the buildings are not there. What would be the value of the land?

A. It would be more than it is now with the buildings on it.

Q. It would be more than with the buildings. How do

92] you arrive at that? A. Because your buildings are worthless. It would cost you money to move them off.

Q. Well, we're assuming there is no cost of removing, this is naked land. A. I see.

Q. Just like all that land around to the south and the southeast. Just bare naked land. A. It would still be worth the same amount.

Q. Why? A. Because it's walking distance to town,

for one thing.

Q. Well, most people have automobiles nowdays.

A. A lot of them don't. You'd be surprised.

Q. Are you acquainted with the modern trend to move out from the central portions of the city area?

A. I am.

Q. And doesn't that condition exist in Cheyenne and around Cheyenne as well as any place else?

A. With some classes of people it does, yes.

Q. There are a few people that don't have automobiles?

A. That's right.

Q. But you wouldn't set up a big housing area just to accomodate those few people, would you?

A. I think it would be a paying proposition.

93] Q. You think there are people that walk, that they want a place like that? A. That's right.

Q. All right, now assuming again -- oh, I want to get back to my original question there. Would you still designate this as a low cost housing area -- or, I mean a multiple dwelling area? A. Oh, yes.

Q. And that would be more suitable than any other lands in this whole area? A. Due to its location, yes.

Q. And you would walk right to that piece of land and say there's only one purpose for which this should be used and that would be multiple dwellings?

A. No, no, it could be used for industrial purposes, too.

Q. Well, how about low cost individual family dwelling units? A. Well, it could be used for that but it would be of less value.

Q. Why would it be of less value? A. Due to the fact you are using the same amount of ground for one family that you could and would use for two or three or four, including your lot and yards and everything.

Q. Well now, Mr. Hebert, is that -- A. No, it's Hebert.

Q. Hebert. How do you spell that? A. H-e-b-e-r-t.

94] Q. Well now, Mr. Hebert, are there any privately-operated multiple projects anywhere within the City of Cheyenne at the present time? A. Oh, there's many apartment houses. Some cases there's two and three apartment houses in one block and sometimes one. There is no multiple dwelling setup like that in the city that I know of.

Q. Well, what would be the most land anywhere within

the City of Cheyenne that is occupied by multiple dwellings, I mean by a group of multiple dwellings.

A. Oh, I know of one that has -- covers two or two and a half blocks out on Randall Boulevard and then there is another spot of 1300 block on East Pershing Boulevard where there is three four-unit buildings.

Q. Well, about how many acres would be involved in each one of those multiple dwelling areas? A. Oh, four, five acres, three acres, depending.

Q. At the most. They are small, scattered areas, aren't they? A. Yes, they are. Yes.

Q. All right, now how many sales of land have there been in the City of Cheyenne even during your experience since 1933 for areas of let's say seven or eight acres for the purpose of building a multiple dwelling project upon it.

A. There has been none because there has been no money to finance the thing. The demand is there.

Q. But no money? A. But no money.

Q. And if there is no money, there is no market, is there? A. Oh, yes there is.

Q. How can there be a market without money?

95] A. Well, that's true, too. But --

Q. A large housing project is a vision, isn't it?

A. Not necessarily. As a Real Estate Broker if you had a piece of ground in the City Limits like that one is, you could readily find some buyers for it, but the thing is, it's not available.

Q. But there's no money, so with no money there's no market. I think you've answered -- A. I believe if we had the location and advertised we could soon find the parties with the money.

Q. Now do you know what all is involved in creating a multiple dwelling project, Mr. Hebert?

A. Yes.

Q. What is involved? A. Well, you've got to get your city utilities and streets, sidewalks, curbs, gutters.

Q. How many multiple dwelling units would you build out there on this raw, naked land? A. On this Van Tassell property?

Q. Yes. A. I think the property is about properly proportioned right now. There's fifty out there.

Q. You wouldn't want to put any less or any more?

A. Well, I'd say yes, and I'd say no, depends upon how you want me to answer that question.

96] Q. Well, I want you to answer the way you feel about it. A. Well, there could be more put out there if they were put up differently.

Q. All right, now what would it cost to build a multiple dwelling area project up there? A. Well now, that's a broad question.

Q. I know it is. A. Depends upon how big, what kind of house you are going to build. You could build a house for five dollars a square foot, you can spend twenty dollars a square foot, depending upon the quality of material and how you're going to build it.

Q. Well, you would fit it to the area, wouldn't you?

A. Yes.

Q. You're acquainted with the type of dwellings that are directly to the west of Van Tassell, aren't you, the type of construction? A. Yes.

Q. And what it is out there. You're also acquainted with this area immediately to the east of Van Tassell Terrace, aren't you? A. That's right.

Q. How would you describe this area just immediately to the east? A. Well, I think it's the first class residence, it's first class residence. Is that Leisher-Black?

Q. No, I'm not talking about Leisher-Black. I'm talking about the area that is bounded on the north by Crow Creek and on the east by Deming Drive. A. Well, that isn't much of anything due to the fact it's not level.

97] Q. There are houses in there, aren't there?

A. There are some shanties in there, yes.

Q. Yes, that's a blighted area in the City of Cheyenne, isn't it? A. Due to the fact the way the land lays.

Q. But it is a blighted area. The houses that are built in there are shabby -- A. They are sub-standard.

Q. Yes, they are sub-standard. All right, sir. All right, what kind of a pr. ect have you got over here to the west? What would you call that? A. The west of Van Tassell?

Q. Yes. A. That's the Atlantis --

Q. That's the Atlantis project? A. I think they are a very nice bunch of houses and they are suited to the class of people that purchase them and I certainly wouldn't call that anything but a good residential section.

Q. But it is a low cost housing project, isn't it?

A. Well, it is. But the way they are built on a production line basis, you might say, they are produced for

less money but they are worth more money than they are getting for them.

Q. Well now, that isn't the question I asked you. It is an area, it is a project that is attractive to low income groups of persons, isn't it? A. That's right. May I add one thing?

98] Q. All right, go ahead. A. Just a little bit west of that project there are some twenty and twenty-five thousand dollar homes within a half mile.

Q. Well, that may be true, but this area down in here has been developed as a low cost housing project, hasn't it?

A. That's right.

Q. All right, sir, now there are different kinds of multiple housing, aren't there? A. Oh, definitely.

Q. There's low cost multiple housing, isn't there?

A. Yes.

Q. And there is medium pric d multiple housing.

A. That's right.

Q. And there is real high priced, exclusive multiple housing, isn't there. A. That's right.

Q. All right, of those three types, what kind would you put in there? A. I would put in a medium.

Q. A medium? A. Yes.

Q. You mean you would put in a medium between a blighted area and a low cost housing project? A. I certainly would, because it's large enough, it's by itself, in a class by itself.

Q. In a class by itself? A. Yes.

99] Q. All right, how much would your building cost be in there? A. Well, that's another question I can't answer. You tell me what kind of building.

Q. Well, you tell me what kind of building. You are the one that said this is suitable for multiple dwelling use. Now you certainly must have planned this out so that you could arrive at this conclusion you did, didn't you?

A. I didn't plan it out, no, but it's --

Q. You just jumped down to that conclusion? A. Oh, no. No.

Q. Do you have any idea what rent you would charge in there? A. Yes, all the way from $50.00 to $75.00, $85.00 a month.

Q. All right, what kind of building would you have to put in there then in order to come out even on that kind of rent? A. What do you mean? What kind of building?

Q. Well, would that be low cost buildings?
A. No, not low cost and not high cost.
Q. Somewhere in between? A That's right.
100] Q. Kind of medium? A. That's right.
Q. Now do you have any idea what your utilities and overhead would be to run a large housing project that you seen to have in mind here? A. Well, if I was doing it, I would let them pay their own utilities.
Q. But there are maintenance costs that include utility costs, aren't there? A. Yes, some. There is painting, cleaning, a little repairing.
Q. Do you have any idea what that would run?
A. Oh, yes, possibly two percent a year or less.
Q. Now have you thought what profit you could make out of that area? A. No, I've never gone into that.
Q. Well, really then, Mr. Hebert, unless you had gone into a study of that, figured how much it was going to cost to build it, how much it was going to cost to maintain it, how much it would -- how much rental you would have to have, you really can't make a good decision as to whether it's suitable for that purpose, can you? A. Yes, I can.
Q. You can just go out and say that's suitable for multiple dwelling use? A. That's right. Or industrial.
Q. You think that's all there is to it? You think that's all there is to it? A. Oh, no. Oh, no.
Q. All right, sir. You have arrived at a valuation of $181,462.00, I believe, that is right, isn't it?
A. That's right.
Q. That's multiplying thirty-one acres times a value
101] of $5895.00 an acre? A. That's right.
Q. That's what your figure comes out. Have you ever made a previous appraisal on this land? A. I was out there at the request of the Mayor of the City of Cheyenne in October. There was Tom Searl, Rudy Hoffman, Cliff Bloomfield and myself. We drove up and down the streets, went in a few places and we sat huddled in the car and we arrived at a price, that is, I still held my price at $1250.00 an acre and some were a little bit less, and I had never seen a written report of that, I don't know where the report went to, but if I am not mistaken, I believe we set the value at that time at $124,000, $125,000, but my figure was higher than that.
Q. You say your figure was about $1250.00 an acre?
A. Thereabouts, yes.

Q. At that time? A. Yes.

Mr. Hickey: Just a moment. $1250.00 an acre?

Witness: $1250.00 a lot, I beg your pardon.

Q. $1250.00 a lot? A. Yes.

102] Q. You joined with that group, didn't you in coming up with an appraisal of $124,000? A. My appraisal was higher. I believe if there is a record available it should show. I have never seen a written report on it.

Q. But you came up with them with an appraisal of $124,000? A. I didn't come up with it. I was out for more because it's worth more.

Q. Well now, how did you arrive at that figure of $124,000 at that time? A. Because other comparable lots all over were selling for that and even more.

Q. All right, do you remember what comparable cost lot you used there? A. Well, the Leisher-Black addition, for instance.

Q. I mean what figure did you come up with for each lot? A. $1250.00, approximately.

Q. I'm talking about your joint action. Didn't you come up with a lot valuation of $800.00 for each lot within the Van Tassell Terrace? A. As I remember there was nothing mentioned per lot. I think they lump summed it at $125,000 or $124,000, or thereabouts.

Q. You don't recall that -- A. No.

Q. (Continuing) -- that a figure of $800.00 was used and that Van Tassell Terrace was divided into one-hundred fifty-five lots? A. I don't even know why the appraisal was requested. I went out there at the request of the Mayor at that's the last I hard of it.

Q. But you were with that group that came up with $124,000? A. Yes, I was.

103] Q. And that was joint action? A. Well, there was differences.

Q. But you all concurred in the $124,000?

A. I didn't concur at all in it.

Q. You didn't join in it? A. I agreed just to be agreeable but I --

Q. You did agree then, didn't you, just to be agreeable?

A. That's right.

Q. All right. Now let's take that $800.00 figure there

and did this group arrive at that on a raw, naked land basis -- A. Yes, sir.

Q. Or did it arrive at that figure on a developed --

A. A raw basis. As a matter of fact, Mr. Archie Allison is one of the group and he is one of the old, old, reliable contractors, and he said he wouldn't take the buildings as a gift. I remember that.

Q. All right, that's fine, that's all right. We are not concerned with the buildings in this law suit. They have no place in it. A. Uh-hmm?

Q. We are only worried about --

The Court: Proceed with your interrogation. Never mind instructing the witness on the law.

104] Mr. Raper: Thank you, sir.

Q. But you did then join in that other appraisal just to be agreeable? A. Yes, sir.

Mr. Raper: That will be all.

Redirect Examination by Mr. Hickey:

Q. I just have about two questions, Mr. Hebert. The first question I want to ask you about is the proposition -- in answer to Mr. Raper's interrogation as to whether or not any one in the City of Cheyenne had enough money to develop a multi-housing unit, do you in your business associates or clients have clients of yours or of the general real estate area who you believe have sufficient money to develop such property? A. Oh, yes.

Q. You do? A. Yes.

Q. Now, were any of the people who sent requests to you to appraise the area, were they of sufficient financial ability to pay for such a multi-housing project?

A. Say it again.

Q. Were any of the people who sent requests to you seeking to locate such a tract as that to move into Cheyenne, were any of them of financial ability to build such --

A. Yes.

105] Mr. Raper: Now just a moment, Your Honor, I think that should be stricken because there was no

consummated transaction.

The Court: Well, this goes under another point as to whether funds were available. Overruled. I think it's proper.

Q. You may answer that. A. Yes.

Q. So then you would say that within your immediate knowledge there are a number of people available to the City of Cheyenne who would have sufficient money?

A. Yes. May I add one thing?

Q. Yes, sir. A. I am corresponding with the National Trucking concern right now who are looking to -- they want twenty or twenty-five acres --

Mr. Raper: I think, Your Honor, that's probably improper. It's a negotiation that's underway now, it's not back --

The Court: I think it has a little bearing. I will permit the answer to stand but I don't think it should be pursued.

Q. Just one further question, Mr. Hebert. In your examination of the area in and about Cheyenne, can you find any other area in any part of Cheyenne that would be as suitable or more suitable <u>that</u> the Van Tassell Terrace area?

A. No, not that large and walking distance to town.

Q. Is there any area in Cheyenne comparable to it?

A. Not to my knowledge.

Q. Now is there any area where the sewer and water are contiguous to the area -- A. No.

Q. (Continuing) -- that would be suitable?

106] A. That's right.

Q. And those were factors which you took into consideration? A. That's right.

Q. Now are you acquainted with the Wherry housing project in the City of Cheyenne? A. Yes.

Q. Was it financed locally? A. No, sir -- oh, yes. Locally, yes.

Q. It was financed by local people? A. That's right.

Q. So that that is evident proof that there is money in Cheyenne for financing such? A. That's right, yes, sir.

Q. Now, Mr. Hebert, is there any other area that has

been platted for the number of years that this area has, to you knowledge? A. Not to my knowledge.

Q. How many years has this area been platted and laid out as a part of the city. A. I couldn't answer that exactly. Goes back in 1887 or 1889, somewheres in there. I really don't know.

Q. Now, in considering the use of this land, did you take into consideration that it had for the last fourteen years been used as a medium housing area? A. Yes, sir.

107] Q. Now, speaking of the group that Mr. Raper interrogated you concerning, who came up with the figure of $124,000, did they take into consideration at that time the benefit they would receive from the annexation ordinance which charges two cents a square foot? A. Oh, yes.

Q. You considered that? A. Yes.

Mr. Hickey: That's all.

Recross-Examination by Mr. Raper:

Q. I'd like to ask you a few questions about this Wherry housing project you mentioned. Do you know where that's located? A. Yes, on government property.

Q. Yes, it's located on Warren Air Force Base, isn't it? A. (Nods affirmatively.)

Q. And the purpose of that housing project is defense housing and military personnel and government employees, is that correct? A. That's right.

Q. Is that a multiple dwelling area or is that a single family dwelling area? A. It's both.

Q. All right, how many are the most people that live it any one of those dwellings there, I mean families, excuse me. A. I just couldn't tell you exactly. I think some with three, some with two, some with one, I believe. I don't know.

Q. But they are all intermingled, aren't they?

108] A. Oh, yes.

Q. There might be a single dwelling house --

A. I believe that most of them are two, some three.

Q. But they are all mixed up in there, aren't they?

A. That's right.

Q. Into attractive areas? A. Yes.

Q. Then that wouldn't compare in any way with what you propose to be put up here in this Van Tassell area, would it?

A. Yes, similar. I'm not proposing to put anything up.

Q. Well, you've got to think about that when you are thinking about all uses, don't you? A. Yes, but your demand for land creates your value.

Q. As a matter of fact that might be a pretty good idea, to develop that area in there, putting in say a single dwelling, and then maybe a duplex and then you might put in a dwelling for three people and a dwelling for four and mix them all up. A. That wouldn't be my idea.

Q. You want all multiple dwellings.

A. I want to get all the people in the same number of square feet I could, to bring in revenue.

Q. Then you couldn't possibly compare the Wherry housing project with this one, could you? A. Well, you could compare the setup with it, yes.

109] Mr. Raper: I think that's all.

A. I might add just one more thing, if you'll allow me. I understand some of the rents out to Wherry is clear up to eighty and eighty-five dollars a month.

Mr. Raper: That's all.

* * * * *

GAYLE DELLINGER, called as a witness on behalf of the defendants, testified:

Direct Examination by Mr. Hickey:

Q. Will you state your name, please? A. Gayle Dellinger.

Q. Where do you live, Mr. Dellinger? A. My legal residence is Colorado Springs, Colorado.

Q. What is your business, please, sir? A. I am in the real estate development and housing business. I develop land and build houses.

Q. You take rural land and develop it for the erection of houses? A. That's right.

Q. Now, Mr. Dellinger, do you have an operation in Wyoming? A. Yes, sir.

Q. And where is it in Wyoming? A. I have one in

Cheyenne, Wyoming, one in Laramie and one in Rawlins.
110] Q. Coming specifically to the one in Cheyenne, Wyoming, is it the developed area which is contiguous to the Van Tassell Terrace and adjacent thereto?

A. Yes, sir.

Q. And it comprises the area which has been referred to in this lawsuit as the Berger area, the Atlantis area and the Dellinger area? A. That's right, sir.

Q. Now what is actually the true nomenclature, Mr. Dellinger? What is its proper name? A. The land was bought by myself in the name of Gayle Dellinger. The housing project was built -- actually built by a company known as Atlantis Investment Company which I control, it was a limited partership. I was the general partner which completely controlled the operation of building the houses and actually completing the project and selling it.

Q. Now have you had experience prior to this in this type of construction and development of housing?

A. Yes, I have.

111] Q. Where and when, if you please, sir? A. Basically since 1946 I have done nothing else, other than buy and develop sub-divisions and build housing developments on them. A number of pieces of land I have developed and then sold the land without developing them. Many of them I have gone clear through and developed it in its entirety, building the housing and some commercial areas and such.

Q. Now, what States in particular have you operated in? A. In New Mexico and Colorado and Wyoming and Utah.

Q. Now, could you tell us the size of your development in New Mexico? A. I've had a minimum of four at least fairly good size housing developments in New Mexico, constituting some thirty acres on up possibly to a hundred acres.

Q. There were four developments that ranged from a thirty acre development to a hundred acre development?

A. I believe that's right, Mr. Hickey. That's, as I told you, began in 1946, I bought a tract of ground and started development on it at that time and I was in that area until 1950 and during that time I'm safe in saying to you that I developed at least four sizeable tracts of ground.

Q. Now in Colorado how many did you develop and what were their approximate sizes? A. In Colorado I have developed -- and some of these are not finished at this date even --

developed one in Pueblo, Colorado, with the original tract of land 220 acres. That at the present time has approximately 275 houses built in it. I had one -- I have one at the present time in Cortez, Colorado. I believe that's somewhere in the vicinity of 40 acres. That's approximately half done. I had one at Ft. Collins, Colorado, was rather a small one. In Colorado Springs I've developed about five tracts of ground, the largest one was 120 acres. There were two 35 acre tracts and I have an interest in a 183 acre tract that's being developed at the present time. The 120 acre tract has close to 300 homes in it at the present time. There are still 200 and some to go in that area, still underway and in progress. I have one of the 35 acre tracts that is set up and actual construction is underway in that project and it's only about a third, I would say, finished. That particular one I bought the land and subdivided and have sold the land to the builder. I'm not doing the building in some of those.

112] Q. Now, in our sister State of Utah, what particular developments have you done? A. I have over there -- the first tract I bought was a 30 acre tract which I subdivided and built out in houses comparable to this Cheyenne project and I have bought another 15 acre tract and another 22 acre tract which I am actually building in the 22 acre tract and sub-dividing the other one at the present time.

Q. Now, what town is it near? A. That -- one of those is Orem, Utah and the other one is at Provo, Utah. About a year and a half ago I bought I believe a 32 acre tract in Ogden, Utah and subdivided it. I haven't done anything with it to the present date, still haven't, but I have an interest in it.

113] Q. I understand then you are developing in Rawlins, in Laramie and in Cheyenne. A. Yes, sir.

Q. Now I have covered the States that you developed in, have I not? A. I have had an interest, Mr. Hickey, in developing a piece of ground in California, Richmond, California, that I just had a ten percent interest which I have since sold. I had an interest in a new township in Edmonton, Alberta, Canada, that I did some work on but I have since sold my interest in that.

Q. Well now, will you explain to us just exactly how these developments are accomplished? A. Well, in entering an area that appears to be interesting from a housing standpoint, I would -- I look first for a piece of ground

of large enough area that you can have a continuous development in the event that the housing market in a city would be such that you can continue building over a period of two or three years, or five. Then the two most important things in evaluating a piece of land to buy for development, to my way of thinking, would be possibly first the price of raw land, second its availability to utilities, particularly water and sewer. And I find many places there are nice pieces of ground that have no value to me or to anyone for development in the housing industry because of the lack of sewer or water facilities, doesn't necessarily mean that there isn't a trunk line near you, if there is no capacity in it, you're not allowed to use it. It's
114] valueless as far as I am concerned and as far as the housing development would be. I usually pick an area, as I stated before -- I'm not interested in a real small spot where you can't expand in the event the market in this particular city, as to how far it can go. It's necessary to have enough room that if the market is there and the city is growing, that you can keep on building and developing land.

Q. Well now, coming down particularly to the Cheyenne area, you are the gentleman who purchased the first sale from Mr. John Arp that he testified about in Court?

A. Yes, sir.

Q. And you have made a second purchase from him?

A. Right.

Q. And are you still in business and desirous of continuing? A. Yes, sir. Yes, sir.

Q. Now, could you tell us how the continuation of this project will work? Where will your next <u>situs</u> be?

A. I have already talked to Mr. Arp a number of times --

Mr. Raper: I think, Your Honor, that probably what is going to happen in the future here is not important. I think that what has happened about August 25 is pertinent in this --

Mr. Hickey: May I withdraw the question? I'll try to build up to it.

Q. At the time you made the first purchase, Mr. Dellinger, and the second purchase and prior to August 25, 1955, and you contemplated a further development in this area?

A. I had, sir.

115] Mr. Raper: I don't believe that that, Your Honor, is material to the issues of this case. I think the only thing we are interested in with this gentleman is what did he buy and how much did he pay for it.

Mr. Hickey: That may be all he's interested in but I am interested in more than that.

The Court: I will permit this answer. Overruled. I'm not sure it's entitled to any weight, but it may be preliminary.

A. At least a year ago I entered a negotiation with Mr. Arp in regard to another forty acres of land which would be a third purchase in this area.

Mr. Raper: I think, Your Honor, that just bears out our contention here that it's immaterial because it's no more than in a state of negotiations and there is no actual consummated deal for any further land than what has been brought out.

The Court: I think the objection must be sustained and the last answer will be stricken.

Q. Mr. Dellinger, how did you happen to come to Wyoming to develop this Cheyenne area?

Mr. Raper: I think, Your Honor, it's immaterial how Mr. Dellinger came. He came, in any event.

The Court: Overruled. It may be preliminary.

116] A. I came here as a result of economy housing that I was engaged in building in other states and as almost a direct request of the Federal Housing Administration to come into Wyoming with some similar housing.

Q. Now did the Federal Housing Official Authority from Wyoming examine any of your projects? A. Yes, sir.

Q. And where did they examine them? A. In Colorado Springs and in Pueblo, Colorado.

Q. And after that they suggested that you come to

Cheyenne? A. Right.

Q. Now when you came to Cheyenne, did you examine all the areas in and about Cheyenne for a possible location to project your development? A. I think we did. Possibly not all of them. We made quite an extensive effort to find a certain tract of ground that suited our purpose.

Q. And what was your conclusion? A. My conclusion was that the piece of ground that I bought was the best deal for my purpose that I found.

Q. And where is that ground located with regard to the plat of land? A. Located immediately west of Van Tassell Terrace, begins there with Block 14 and 28 which are contiguous to Van Tassell at the west.

117] Q. And is that in what has heretofore been referred to as Interior Heights? A. I believe it is, sir.

Q. Now, I wonder if you could tell me something about the topography of the land which you purchased and developed? A. The first tract of land that I purchased constituted approximately 40 acres. Part of it had a very low place in it without a natural drain. It was necessary for us to move dirt from a higher place and fill this spot in as we developed the project.

Q. And did that cost you considerable money?

A. Our records indicate that there was approximately $9600.00 to use that two blocks or three, whatever it was.

Q. And that was for the purpose of arranging the topography or surface of the land so it would be usable?

A. Yes, sir.

Q. Now you are acquainted with Van Tassell Terrace, are you not? A. Yes, sir.

Q. Would you just compare the topography of Van Tassell Terrace with that topography? A. Generally the topography of the land underlying Van Tassell would be considerably -- from the physical aspect, better than the piece of land that I have.

Q. Now, how many housing sites did you develop on that first piece of land? A. 192.

118] Q. And they were single individual units? A. Yes, sir.

Q. Now, in addition to your expenses regarding the filling in of the land, did you have other expenses?

A. It was necessary to put a storm sewer in. I believe it was $20,000 to $21,000 on this first tract of ground.

Q. And any other utilities? A. We had a sewer access

line of -- oh, not in excess of $5,000.

Q. And your water? A. The city brought the water main to us on a per house basis.

Q. Now, you spoke of a storm sewer that you had to put in. I wonder if you would come to the map and show us whether or not it had any effect upon the Van Tassell area.

A. The requirement of the storm sewer -- the area in the first purchase that I made from Mr. Arp was here in Blocks 36 and 37. That also in this area immediately south of Van Tassell was a similar situation that any time you had a rain that any water ran off, formed a lake immediately south of Van Tassell, with no natural outlet. That storm sewer that we put in jointly with the city came from approximately this point (indicating), came up here and went right across this lake on out and tied into a large trunk line of the city somewhere here, near the railroad track. We were required to pay for it to this point (indicating), off of the southeast corner of Van Tassell. I'm sure that that storm sewer was large enough and designed to take the lake that formed as a result of the run-off away from the south edge of Van Tassell.

119] Q. Thank you. Now are you acquainted with the Leisher-Black development? A. Yes, sir, I am.

Q. And where is it located, if you please?

A. It's approximately a quarter of a mile, I would say, southeast of Van Tassell Terrace.

Q. When did you start this development? What year, sir?

A. 1954.

Q. And do you know when the Leisher-Black was started?

A. No, I don't. I really don't.

Q. Was it prior to your development?

A. I believe there were possibly five or maybe seven or eight houses out there when I started this other one.

Q. Well now, from your experience as a developer in the various States and particularly here, could you tell me what effect the development of your area and the Van Tassell Terrace area has upon the value of the remaining lands, including Van Tassell Terrace? A. As I have found in all of these developments that any time you buy a piece of raw land in an open area and start a development, that as the development grows, the more units are built, the more people live in the area, the more streets are paved, even goes to the trees that are planted, the lawns in, the greater that development, the greater the value of any land contiguous

to that piece of ground. And I have found that pattern here, that I buy one tract and I have no way of knowing what the market would be in Cheyenne, and rather than buying a very large piece of that land, we take one section of it and start a development. We test the market. It looks fine, then we are ready to take another piece of ground. We expect to pay more for it. Every time we build houses in one area, any land contiguous to it we expect to pay more for it. It steadily increases the value, beyond a doubt.

120] Q. Were you in Court yesterday when Mr. John Arp testified, Mr. Dellinger? A. Yes, sir.

Q. You heard his testimony with regard to the contracts entered into between you and him which are indicated in Defendants' Exhibit G and F? A. Yes, sir.

Q. I hand you herewith for the purpose of refreshing your recollection the copies of these agreements which are the exhibits in Court and ask you to examine them. Now you recognize, as I understand it from your testimony, that the first piece of land purchased is at the least price?

A. Yes, sir.

Q. And if the development works out, each additional purchase of land that you make is at an increased price.

A. Yes, sir.

Q. Now, going back to your first development, which I think you said was the 192 houses, did it prove rapidly that it would be a successful development? A. Yes, sir, it did. We opened it for sale and within ninety days or less we had contracted to build a house or we had sold a house on each of the 192 lots -- I will qualify that remark. Mr. Berger had sold them as our agent, as the sales agent for the project, had a contract for the sale of each of the houses on the 192 lots, I think I am perfectly safe in saying after ninety days after we had announced the opening of the project.

121] Q. Well now, what conclusion did you come to from that? A. That the market here was strong enough to justify me in making an additional contract with Mr. Arp for the purchase of some more land.

Q. And did you expect that the second purchase would be more than the first? A. Sure.

Q. And was it made relatively soon after the first?

A. I believe within six months, or something like that.

Q. Now, we have considered your two projects. Does the Black, or Leisher-Black project have the same effect upon

the land? A. In my opinion, it surely does.

Q. And each additional one that is in that area increases the value of that land? A. I'd say so, yes, sir.

Q. Now, going back to your contracts again, what were the dates of those contracts?

A. The first one was 27th of May, 1954.

122] Q. And does that contract establish the value as of that date? A. Yes, sir.

Mr. Raper: I think, Your Honor, that that's probably an opinion of the witness. What does it say?

The Court: I think it's calling for a conclusion. The contract speaks for itself.

Q. Now, subsequent to that contract and in accordance with the contract, you took the deeds at later dates, is that true? A. Yes, sir.

Q. Going to the second contract, what was its date?

A. October 19, 1954, I believe.

Q. And you determined at that time that the value recited therein was the value of the land at that time?

A. Yes, sir.

Q. Now going particularly to the Van Tassell area and considering the fact or going into the realm of unreal and taking all the Government improvements off there, if that land were what Mr. Raper calls raw land and nothing was on there, having in mind particularly the Van Tassell Terrace and keeping in mind your development and your interest in your development, what is the highest and best use in your opinion for that land? A. I agree that -- my firm opinion is that its highest and best use is basically for what we would term multi-housing units. I would qualify that in my particular situation and in view of what you just said to me, my development and my plans, what is already done, the land I am under contract to continue to use, that I would use possibly a portion of it for commercial area, that I would use a certain part of that piece of ground for store buildings of some kind, grocery store, drug stores and such as that as ordinarily go with a housing development. The rest of it would be extremely suitable for multiple units of some kind, not necessarily large, very elaborate, very expensive apartment houses, but for multiple units that would take care of the people that desire to live in and near the

industrial area of Cheyenne, Wyoming.
123] Q. Now, do you think that this particular area designated as Van Tassell Terrace is the most suitable in the entire area for the multiple housing project? A. Yes, sir, that is my firm opinion.

Q. And why, sir? A. There are a number of reasons why. As has already been stated, its proximity to the City of Cheyenne, the down town area particularly, its proximity to the railroad shop, the industrial area of Cheyenne, Wyoming, the physical lay of the land as far as the entire area is concerned is the very best spot for a multiple housing unit that would be close. I think -- my personal opinion, no doubt that's why Van Tassell was built on this spot of land to start with. It's the best spot in the entire 667 acres for such a development.

Q. Now do you feel that on August 25, 1955, there was a demand and need for multiple housing in that area?

A. I believe that's right, yes, sir. The fact that
124] there are people living in Van Tassell Terrace indicates there is.

Q. Now, Mr. Dellinger, considering all the things you have discussed and your vast experience as a developer, are you prepared at this time to place a value upon the underlying Van Tassell area, a value that a willing buyer would pay a seller who did not have to sell?

Mr. Raper: I don't believe, Your Honor, that this witness has qualified himself beyond that of a developer. I don't believe he has qualified himself as to any market value beyond that of a developer and I don't believe he is capable of answering this question.

The Court: Oh, I think it's foundation for him to testify. It might go to the weight if you completed your qualification of him. I will overrule the objection. I think it would be more simple to ask him whether he has a judgment as to the fair market value of that property underlying the Van Tassell development without reference to improvements, as of August 25, 1955.

Q. Did you hear the Court's question?

A. Yes, sir.

Q. Will you answer it, please. A. 125 --

The Court: No, do you have a judgment as to the fair

market value. You can answer that yes or no.

A. Yes, sir, I believe I do.

Q. What is that, please, sir? A. I would say $125,000.

125] Q. And would that have in mind all of its uses?

A. That, I believe in my opinion, and I would qualify that remark, that I would use it for whatever purpose I should see fit, even to using it for housing development rather than multiple dwelling.

Q. Even to using it for single housing development purposes such as you have now --

A. That's right.

Q. On the adjacent land? A. That's right.

Q. Do you know of any other land contiguous with or adjacent to Van Tassell Terrace other than the Leisher-Black area, that is within a quarter of a mile radius that has been bought or sold for development? A. No, sir, I don't.

* * * * *

Cross-Examination by Mr. Raper:

Q. Mr. Dellinger, you are the same witness who was on the witness stand just before the Court recessed?

A. Yes, sir, I am.

126] Q. Do you recall having a conversation with Mr. John J. Rooney, an F.B.I. Agent on June 27, 1955, with respect to this property that you have developed out there?

A. I had a conversation with Mr. Rooney in the lobby of the Plains Hotel. I couldn't ascertain exactly the date.

Q. All right, now do you recall telling him at that time that you would be willing to pay $3,000 an acre for Van Tassell Terrace? A. Possibly so.

Mr. Raper: I think that's all.

Redirect Examination: by Mr. Hickey:

Q. You would be willing to pay a $100.00 an acre too, wouldn't you? A. I certainly would, sir.

Mr. Hickey: Thank you.

The Court: You may step down.

EUGENE G. BOWES, called as a witness on behalf of the defendants, testified:

Direct Examination by Mr. Hickey:

Q. Will you state your name, please, sir?
A. Eugene G. Bowes.
Q. Where do you live, Mr. Bowes? A. I live at 5053 South Fairfax in Littleton, Colorado.
Q. And what is your business, Mr. Bowes? A. We are consultants on valuation, development and leasing and financing of real property.
127] Q. Now, Mr. Bowes, where do you generally work?
A. My office is in Denver, Colorado at 445 Grant Street.
Q. And have you appraised property in Wyoming?
A. I have.
Q. And have you appraised property in Cheyenne -- have you appraised property in Cheyenne prior to the first day of July, this year? A. I have, yes, sir.
Q. And have you appraised property in Cheyenne prior to August 25, 1955? A. I have.
Q. Now I take it that in the course of your business you acquire membership in various real estate associations?
A. I am a member of the Denver Board of Realtors, the Colorado Association of Real Estate Boards, the National Association of Real Estate Boards, and the American Institute of Real Estate Appraisers.
Q. Now do you hold any particular offices or are you an officer or director of any of these -- A. I have been a director of the Denver Board of Realtors and the Colorado Association of Real Estate Boards and was president of the Colorado Chapter of the American Institute of Real Estate Appraisers, and presently a member of the Education and two other committees of the American Institute of Real Estate Appraisers.
Q. Well now, could you tell us something about the American Institute of Real Estate Appraisers. What is it actually? A. It is a professional institute whose purpose is, No. One, education of other appraisers and prospective appraisers; Two, qualify them as to their education, experience, background and their professional abilities
128] in appraising, and for those who are qualified to award the designation "MAI", which means "Member, Appraisal Institute."

Q. Do you know of anyone in the State of Wyoming who is a member? A. I believe there are no MAI's in Wyoming at this time.

Q. Then perhaps the closest to Cheyenne would be at Denver, Colorado? A. That's correct. Greeley -- there are two MAI's at Greeley.

Q. Yes, sir. Now in the course of your business, who are typical clients or people that you would work for?

A. We have had recent assignments from Equitable Life Insurance Society of the U.S. with headquarters in New York; Mutual Life Insurance Company of New York, Massachusetts Life Insurance Company of Springfield, Massachusetts; American National Insurance Company of Galveston, Texas; Bankers Life Insurance Company of Lincoln, Nebraska; the U.S. Navy Department; Mountain States Telephone and Telegraph Company; U.S. Department of Interior through the -- or the General Services Administration, I should say; the Denver Country Club; University of Colorado; and the State of Colorado; City and County of Denver; and other municipalities and counties; the Home Owners Loan Corporation, San Francisco; Federal Housing Administration in Denver in years past; the Veterans Administration in Denver; trust departments of several banks in Denver, Colorado, Houston, Texas, New York and San Francisco; and attorneys, states, industrial and retail organizations, and individual clients in the twenty-six western states.

129] Q. Including Wyoming? A. Including Wyoming.

Q. Now then, what is the form and nature of the experience you have had individually? A. We have had experience in the purchase, sale, leasing and management and appraisal of urban properties in Denver, Colorado and other cities in Colorado, some construction and remodeling of single family and multi-unit residences and commercial buildings in Denver. We have appraised residences, orchard lands, dairy and subsistence farms, tide lands, commercial and retail properties over these western states. I think that covers it.

Q. You have had some other experiences along that line also, have you? Appraising land sites?

A. Oh, yes. Appraising properties in those categories, that's correct.

Q. Now, you mentioned in your initial statement with regard to the MAI that one of the functions of the MAI was an educational function. Have you had any particular experience

as an instructor of appraisal? A. Yes, I've taught an undergraduate course in land economics at the University of Denver and at the request of the appraisal institute I have instructed their case study courses through the years 1953 through -- last one this year, Toronto University, New York University, Stanford University, Denver University and Syracuse University.

130] Q. And what is your current business? A. I am sole proprietor of Eugene G. Bowes Company in Denver.

Q. Now, within the past several weeks, have you been retained by our firm and Mr. John Arp to pay particular attention to a project known as the Van Tassell property?

A. I was asked to appraise the land under the Van Tassell Terrace with no regard to the present improvements or any land improvements, utilities that may have been placed there.

Q. Now, did you come to Cheyenne for that purpose and spend some time here? A. I did. I have spent two and a half days in Cheyenne prior to the -- our gathering on Monday, Tuesday and today.

Q. And during the course of your investigation in and about Cheyenne with regard to the Van Tassell Terrace, did you make some notes for the purpose of refreshing your recollection? A. I did.

Q. And do you have them prepared and before you?

A. I do.

Q. And will you from time to time need to refer to them? A. If you please. I would like to.

Q. Now, in addition to the notes and preparation you have made, did you also prepare some other things?

A. I prepared a drawing of the area similar to what

131] is on the board, but with some more detailed information that I have considered inserted in it.

Q. I wonder if you would point out on our Exhibit A the approximate area that you prepared? A. The area prepared in my drawing extends to approximately 17th Street down town, showing the 85/87 access way to down town Cheyenne from the south, the access way generally adjacent or a little northwest of the subject, again to 16th and U.S. 30 to the west and then the area extending from here (indicating) to approximately here (indicating), and to include the Leisher-Black subdivision and the City Limits on the south.

Q. Now, what particular maps or other papers did you

use to prepare this? A. Our investigation -- to prepare this?

Q. To prepare your -- A. Oh, the plats as they are recorded of this area, the sub-division platting of what has been referred to as Sale No. 1 and the replating of the blocks, the tier of blocks just north of that, the plat of the subject as it is of record but not as it is presently developed in the Van Tassell housing project, and the same is true of the Leisher-Black.

Mr. Hickey: I am going to have you mark this.

(Defendants' Exhibit K was marked for identification.)

Mr. Hickey: We offer in evidence Defendants' Exhibit K, Your Honor.

132] Mr. Raper: I wonder if I could take a look at it here.

Witness: As far as I am concerned, we can uncover it.

Mr. Hickey: But we can't until the Court permits us.

Mr. Raper: We don't have any objection, Your Honor.

The Court: Defendants' Exhibit K is received in evidence.

Q. You can take the cover off now. A. All right.

Q. Now, in the course of your investigation, did you appraise the subject property, the Van Tassell Terrace?

A. I did.

Q. I wonder if, before we go into it, you would take the pointer and identify to the Jury the points of importance, beginning with the subject lands? A. The subject lands is cross-hatched in red and marked "subject" with the heavy blue line surrounding it. The area which I will refer to as No. 1 as the perimeter hatching in blue. The areas which I will refer to as Sale No. 2 has the perimeter hatching in green, here and here (indicating). These are labeled 2 in the center of each. The so-called Leisher-Black area is this area (indicating) in which area and in Numbers 1 and 2 several parcels have been labeled with additional numbers. The one-hundred percent retail -- which I label a hundred percent -- is approximately at the corner of 17th and Carey Avenue in

down town. That has the dotted line surrounding it and it's marked "100% Retail". The utilities as they exist at the subject are indicated in the streets and can be identified by this legend.

133] Q. I note there in what is Block 45, there is a little orange -- A. This is Block 45 as platted.

Q. Is that the block which the Joseph Cousins sale as reflected by Exhibit No. H reflects? A. That's correct. That is Block 45.

Q. And that is a consummated sale in that area?

A. The sale indicated -- No. 8 -- is land which was paid for and transferred.

Q. Thank you, sir. Just one further thing, Mr. Bowes. Tell the Jury and for the record what lies between the two plotted areas where your "N" is. A. Yes. This is principally the railroad yards leading into and through Cheyenne, extends on to the northeast and of course to the southwest and certain industrial uses.

Q. And the access roads are on there, are they?

A. Principal access points to the subject -- would you like me to complete that?

Q. Yes. A. Principal access to the subject currently is by way of the Deming Drive which parallels Crow Creek and 9th Street to U.S. 85/87 to the northeast of the subject and again from down town, westerly down town Cheyenne from 16th Street via the over and underpass here (indicating) up Snyder Avenue which adjoins the subject and forms its easterly boundary.

134] Q. Now, you can take the chair, if you will, please, sir. Now, Mr. Bowes, you appraised this subject property, keeping in mind the date of August 25, 1955?

A. I did.

Q. What procedure did you follow? A. First we inspected the subject property, its land and the present improvement. We questioned while inspecting the improvements Mr. George Dawson, the Housing Manager and Mr. Harlan L. Katz, Fiscal Accounting Clerk who managed the present Government multiple housing units at the present site. Our purpose in this is to see if there is and has been or was as of the date of appraisal a market for multiple housing units at the subject site and to see what rentals might be available as indicated by their operation and what vacancies might and should be applied. We second inspected carefully the surroundings, the developed and

developable areas and gathered data regarding sales of properties having in mind that if possible -- let me put it this way -- that the best indication of value of the subject is the sales closest to it. If sufficient data are available -- confirmed data -- regarding sales near or adjoining the subject, they form the best indication of value by comparison, again adjusted for proper use; consider the possibility of sales in other areas but we found fourteen sales which in my opinion give a very clear indication of the value of the subject by comparison and consequently these fourteen sales were our primary consideration.

Q. What in your opinion is the highest and best use of
135] the subject land, Van Tassell Terrace? A. It's my opinion that the highest, best and most profitable use of the Van Tassell land is development to three-unit residence buildings, again in the relatively low category. Before forming this conclusion, we questioned Mr. Dellinger, who has the development next to the property; we questioned Mr. Kay, who is the City Engineer and responsible for the routines of zoning provisions; and the gentleman who testified here earlier, Mr. Hebert, regarding -- to ask the question if zoning for some multiple housing use could be made available.

Q. And what did you learn from that investigation?

A. As to zoning we were informed about as follows: That the Zoning Board of the City of Cheyenne would take the attitude -- I'd like to step to the board once more -- let me start again on that, if you please. Everyone seems to agree that this general area (indicating) is primarily a housing area, single family or multi-family; the higher type of single family housing development is presently in the Leisher-Black area. The land generally south of Third Street has a very fine and interesting terrain, in my opinion and will -- and is now the choicest of the residential areas within our general area. There are other sites which will undoubtedly and properly be developed to single family residence north of Third Street. However, the present development at Leisher-Black began, as compared to the development 1 and 2 which are quite proper in their location, indicate that the area toward the south of the general area shown on this map will undoubtedly be the location for dwellings ranging from $10,000 to as much as $15,000, conceivably a little more than that, and the areas 1 and 2 as presently developed range from $7500.00 to, say, $9500.00. The area immediately to

the east of the subject is an ungraded residential area, very secondary as to improvements and use and in my questioning of the responsible zoning officials, I asked what their attitude would be if there were a petition for residence B zoning of the subject land if it were unimproved, giving no consideration to the fact that there are multiple units on it at this time. The response was about this way: That residence B --

Mr. Raper: I wonder, Your Honor -- just a moment, please, Mr. Bowes. I wonder if we are not getting considerably into the realm of hearsay, things that other people have said.

The Court: I think that may be so as going to another point, but the witness is giving the foundation for his judgment. It may be a proper foundation and it may be improper. I will overrule the objection.

A. The response was this: That any zoning for other than Residence A in the subject land, in that zoning, they would require Residence B in the area adjoining this nice developed area just to the west of the subject, that any multi-family use and some commercial would damage the present residences in the area immediately east of the subject none at all and that the Zoning Board would consider Residence C and some commercial zoning if it were requested toward the easterly end of the subject site.

137] Q. Now, will you tell us what Zone A and Zone B actually are? A. Zone A requires -- I'd like to refer to my notes again, if you please. Zone A requires four-thousand square feet per family dwelling. In Zone B, two-thousand square feet for every two-family dwelling and twelve hundred-fifty square feet for every three or four-family units. Per unit, that is. This is square foot area of land required to build in that area.

Q. Now, you say that Zone C was the zone suggested?

A. No, Zone B would be allowed to the westerly edge of the subject adjoining the present single family residence area but that the Zoning Board would consider a Residence C zone and some commercial towards the easterly end of the subject.

Q. Well now, why is this important for the consideration of that land, Mr. Bowes? A. For this reason: It is my

opinion after my study -- it was my opinion that the highest and best and most profitable use for the subject land is multi-family residence, and that conclusion holds little meaning unless zoning can be obtained that will allow that use.

Q. Well now, considering again the subject land with regard to the manner in which you arrived at a value for it, and along with your procedure, will you tell us something about the sales considered and how you arrived at your conclusion? A. Mr. Hickey, before I do that might I finish on my procedure?

138] Q. Very well. A. We also interviewed Mr. T. P. Black, who is one of the developers and a builder in the Leisher-Black subdivision; interviewed Mr. Gayle Dellinger and were given by him certain cost figures regarding his development. As I said, we interviewed Mr. Dawson and Mr. Katz, who are the managers of the present Van Tassell project; interviewed Mr. Ralph McFarland, Assessor of the City of Cheyenne, regarding principally land assessments regarding single family and multi-family residence assessments; and Mr. Boyd B. Erickson, Appraiser for the State Board of Equalization in Mr. Groshart's office. They handle the assessments of improvements for the City of Cheyenne. Also interviewed, as I said, Mr. R. C. Kay, the City Engineer, regarding zoning. Now the sales --

Q. Is that your next in line of procedure?

A. Yes.

Q. Very well. Now Mr. T. P. Black you mentioned, do you recognize him? A. Yes, I do.

Q. Has he been in Court yesterday and today?

A. Parts of the time, I believe.

Q. And he is in Court now? A. Yes, he is here today.

Q. Okay, your next step in procedure.

139] A. All right. We found, as I said, fourteen sales which in my opinion give a clear indication of the value of the subject property. In comparing these to the subject, each was compared specifically to our subject land, putting ourselves in the position of a typical prudent purchaser who was buying with full knowledge of all the rights, restrictions, uses permitted in the subject with the idea, too, that the seller knows what rights, restrictions, uses are or may be permitted in the subject, by comparing all on a basis of raw land with no value given to any improvements that were placed on the subject by the Government, including water lines,

streets, sewers, or any building improvements.

Sale No. 1, which is the area labeled "Sale No. 1" and cross-hatched at the perimeter in blue, the contract for this purchase was dated May 27, 1954. Grantor was Mr. Arp and -- Mr. John C. Arp and Mildred K. Arp, and the grantee was Mr. Gayle Dellinger, who is a partner in the Atlantis Investment Company. This parcel included 39.55 acres -- just under 40 acres. The consideration quoted was $80,000. Mr. Dellinger has told me that $9600.00 of grading was required to fill a certain low spot in this parcel to bring it to what I consider comparable topography as compared to the subject, indicating a total consideration of $89,600. The terms of this contract were investigated. It, in some respects, is a typical builders contract which calls for release provisions and grading of parcels of the land over a period of time. If no action were required or taken by the builder who is buying this land under the contract over and above his other obligations, in my opinion this contract would have been subject to certain discounts, because we are talking here about cash sale prices. However, Mr. Dellinger's first procedure -- and these figures were taken from his books -- were to let contracts for certain water lines, additional grading -- that's in addition to the $9600.00 I mentioned -- storm and sanitary sewers, paving curbings, gutters, walks, and so forth which total $129,700 roughly. $129,699.84, as taken from his books, or $675.52 per developable site. There were 192 sites in that parcel. Consequently, it's my opinion that at any time after these contracts were let and work was begun, Mr. Arp could have sold his contract for the face value of it to any number of typical purchasers that would have considered it a fair purchase. Going back, our consideration as I mentioned in the contract, $80,000; the basic grading to fill the hole, $9600.00; totalling $89,600; or $2265.00 per acre for 39.55 acres.

140] No. 1, this is again before any comparision to the subject. The only adjustment which is made of this sale price at this point was grading, having in mind that this sale took place as of May 27, 1954, about a year and a half, a little less than a year and a half before our appraisal date.

Sale No. 2, contract was dated October 19, 1954. It concerns the parcels labeled 2, the one north of Sale No. 1 and immediately adjoining the subject on the west which is cross-hatched at the perimeter in green, together with the land south of Sale No. 1 and southwest of the subject, which also is cross-hatched at the perimeter in green. The southerly portion of this Sale No. 2 is outside of the City of Cheyenne and is subject again -- if it's to be brought into the City of Cheyenne where utilities will be made available to it, it is subject to the tax that was mentioned here yesterday of 2¢ per square foot of land, excluding streets and alleys. That affects a portion of Sale No. 2 totalling nine blocks, or 432 lots which are 3125 square feet per lot. That, at two cents a square foot equals $62.50 per lot or a total of $27,000. The consideration mentioned in this contract was $150,000. That, plus the $27,000 annexation fee, again to bring this up to our subject as to its condition of being in the city with utilities available, totals $177,000, or $2849.00 per acre.

141] It is significant in this to note in these contracts that Mr. Arp was under contract at all times. There was no way for him to drop his contract if Mr. Dellinger wanted him to go through with it. Mr. Dellinger, on the other hand, could have dropped his contract. However, that is not likely since in this second purchase he immediately undertook to spend an additional $37,336.50 -- this was taken from his books -- on the area which is cross-hatched in green north of Sale No. 1, which has been and is now being finished in development. So we have Sale No. 2 at $2849.00 per acre. This is as of October 19, 1954, and no consideration has been given to this point in this comparison to the possible use of the subject.

141a] Sale No. 3 is in the Leisher-Black sub-division. It is the dwelling which is known as 801 West Fox Farm Road. It was sold by Verlin R. and Crystal J. Harvey -- or by T. P. and Elizabeth Black to Verlin R. and Crystal J. Harvey. Lot 1, Block 1, Leisher-Black addition to the city of Cheyenne, Laramie County, Wyoming. This property had a house on it. The consideration was $11,000. The cost of building improvements, including all sidewalks on the lot and any exterior improvements, totaled $9450.00, leaving to land $1550.00.

My conversation with Mr. Black indicated that his total land development cost per site was $575.00, which leaves $975.00 to land. However, it's my further opinion that Mr. Black was entitled to a profit on his land and development cost. Consequently I have deducted from that $975.00 15%, which leaves $848.00 to this site. Five sites per acre were obtainable as indicated by Mr. Black, which indicates a value for raw land of $4240.00 per acre as of the date of this sale which was May 12, 1955.

Sale No. 4 is at 103 Kay Street. Let me indicate these sale numberings. This is Sale No. 3 that we have just discussed (indicating). Sale No. 4 is across Kay Street from it and an inside site. Sale No. 5 is a block south and again inside site. Sale No. 6 is across the street from that and near West Jefferson Road and the Sale 7, again an inside site, south across the road on McFarland Avenue.

No. 4 is 103 Kay Street, which was sold April 15, 1955 by Mr. T. P. Black and Elizabeth Black to Clifford W. and Elizabeth Noaks, Lot 17 in Block 1, Leisher-Black addition to the City of Cheyenne. The consideration in this case was $11,000, the same as our Sale No. 3. The improvements were the same as Sale No. 3, which leaves $975.00 to the site after development costs. That's $1550.00 to land, left development cost, $575.00, leaving $975.00. Deducting then the 15% profit on land, leaving $848.00 per site, or an indication of $4240.00 per acre for this as residential land in April, 1955.

142] Our Sale No. 5 is at 205 Kay Street, sold September 7, 1955, by Mr. and Mrs. Black to Robert B. and Phyllis I. Ford, Lot 15, Block 6, Leisher-Black addition. Consideration in this case was $12,000. The prime difference in the improvements was that this house has a basement. It is known as 205 Kay Street. The cost of improvements, building improvements, equals $10,350.00, leaving to land $1650.00; to land development cost -- I might say here that the first two sites we discussed were fifty foot by one-hundred feet and the land development cost in that instance was $575.00 per site. This site at 205 Kay Street is a 55 foot site and the total land development cost is higher, $633.00 per site for 55 foot site, leaving $1015.00 to land. That again minus the contractor's profit, 15% of

land, leaves $884.00 per site or an indication of land value of $4066.00 per acre. This is based on 4.6 sites per acre because the sites are larger. Sale No. 6 is at 224 Kay Street, sold June 28, 1955, by Mr. and Mrs. Black to John K. and Bonnie L. Tanner, Lot 7, Block 5, Leisher-Black addition. Consideration was $11,000. Cost of improvements was $9450.00 leaving $1550.00 to land; land development cost, again this is a 55 foot site, fifty-five by a hundred, $633.00, leaving $917.00 to the site. Deducting from that 15% profit on the land leaves $797.00 profit or an indication of raw land value per acre of $3662.00 based on 4.6 sites per acre.

143] Sale No. 7 is at 305 McFarland Avenue, dated February 24, 1955. This again is a 50 foot site. It was sold by Lee N. and Russ M. Porter to Robert J. Buntin. It is Lot 9, Block 8, Leisher-Black addition to the city of Cheyenne. The consideration was $500.00. There were no improvements on this site at the time of sale, indicating raw land value of $500.00 per site or $2500.00 per acre.

Sale No. 8 is vacant land in a platted but undeveloped area as indicated in orange on the map to my left and your right. This included two building sites totaling one-hundred feet by one hundred twenty-five feet or two 50 foot sites. $1700.00. Sold by John C. and Mildred K. Arp to Mr. Joseph Cousins. It concerns the contract we spoke of a moment ago. It is Lots 26, 27, 28 and 29 in Block 45. Consideration was $1700.00. No improvements on the site, indicating $850.00 per site for the raw land or $4250.00 per acre.

Sale No. 9. Now we are on Stinsen Avenue. The next six sales I'll talk about are No. 9 and No. 10 which are on Stinsen Avenue toward the northerly end of the Dellinger development. No. 11 and No. 12 are on McComb Avenue, again in that same tier of blocks and No. 13 and 14 are on McComb Avenue south of the northerly tier of blocks. All of these sales, incidentally, were chosen at random with no specific consideration given to which house it was. As a matter of fact they were chosen by the abstractor in Cheyenne.

144] No. 9, 440 Stinsen Avenue --

The Court: Just a moment.

Witness: Excuse me.

The Court: Ladies and gentlemen, I note that a Juror or Jurors are taking notes. Now I suppose that there is no great harm in that but I call attention to the fact that even trained note keepers can only keep a few of these figures and there is great danger in noting a part without a stenographic report and giving those undue emphasis and missing, in the process of note taking, other testimony. It has been found by experience that Jurors are at best in a position -- not being stenographic reporters -- to listen to the testimony and evaluate it as it comes in without the taking of notes, so that important testimony will not be missed in the process and so that the fragments that can be reduced to note taking will not be given undue emphasis. I merely mention that in passing. Proceed. The expert testimony in most cases is finally summarized anyway, and these matters go to your weighing and evaluating it. Is there any other suggestion that counsel may add?

Mr. Raper: No, sir.

The Court: Proceed.

145] A. Sale 9, 440 Stinsen Avenue, sold March 29, 1956 by Atlantis Investment Company to L. J. Lopez and Matilda J. Lopez, Lot 2 in Block 12, replatting of Block 10, 11 and 12 in Interior Heights addition to the City of Cheyenne. The consideration was $9,500. This was approximately an 836 square foot bungalow with Johns Manville siding and so forth. This happened to have an attached garage. As I say, it was sold for $9,500, cost of the improvements as indicated by Mr. Dellinger's books, was $6688.00 and of the garage $864.00, leaving $7552.00 to land -- or to -- or a total of $7552.00. It's my opinion that he is entitled to a 7% profit on his construction which equals $568.00 or a total cost of improvements including profit of $8120.00. $8120.00 subtracted from $9500.00 indicates $1380.00 to land. His total development cost as discussed earlier, including all of the sewers, streets and so forth in this area was $859.00 per site, leaving $521.00 per site to the

raw land from which I deduct the 15% profit to which he is entitled on raw land, indicating $453.00 per site. These were 60 foot sites, which will allow 4.2 sites per acre, indicating a land value per acre as of the date of this sale, again without other comparision to the subject, of $1903.00 per acre. Sale No. 10 is at 410 Stinsen Avenue, sold on March 7, 1956, again by Atlantis Investment Company to Frank Locacco and Mary Anne Locacco, and it is Lot 7 in Block 12, replat of Blocks 10, 11 and 12, Interior Heights addition. Consideration was $9000.00. This house had no garage. The cost of the improvements was $6655.00 which in addition to 7% profit to the builder show $7199.00, leaving $1809.00 to land. This, less the total development cost per site which was $859.00, leaves $950.00 to the site. This again, less 15% for profit on the land, equals $826.00 per site or $3469.00 per acre.

146] Sale No. 11 was at 434 McComb Avenue, sold February 29, 1956 --

Excuse me, is it good to put in all this information? About the addresses and so forth?

Q. You may go ahead. A. 434 McComb Avenue, sold February 29, 1956. Grantor, Atlantis Investment Company. It was sold to Harold J. and Elizabeth U. Toothman. This is the south twenty feet of Lot 8 and all of Lot 9 and the north fifteen feet of Lot 10 in Block 13, Interior Heights addition. The consideration was $9000.00. The cost of improvements was identical to that in Sale No. 10, $6688.00. That, plus my figure of 7% profit equals $7191.00, leaving $1809.00 to land. That, less the total development costs per site, $859.00, leaves $950.00. That again minus profit on land, 15%, equals $826.00 per site. 4.2 sites net per acre, equalling $3469.00 per acre.

Sale No.12 is at 406 McComb Avenue. It was sold February 29, 1956 by the Atlantis Investment Company to Earl Clay and Alberta C. Forbes. This is the south twenty feet of Lot 20, all of Lot 21 and the north fifteen feet of Lot 22 in Block 13, Interior Heights addition. Consideration was $9000.00. Improvements were identical to those included in Sale No. 11 and their cost, according to Mr. Dellinger's books, was $6688.00, plus my 7% profit figure, equals $7199.00, leaving

$1,809.00 to land. The total development cost per site was $859.00, leaving $950.00 to the site. This, minus 15% for land profit equals $826.00 per site or $3469.00 per acre at 4.2 sites per acre.

147] No. 13 at 357 McComb Avenue, sold July 19, 1955. This is a 50 foot site sold by Atlantis Investment Company to William W., Jr. and Carol S. Weisz. It is Lot 47 and 48 in Block 28, Interior Heights addition. The consideration in this case was $7500.00. This is a smaller house, 748 square feet. It cost, according to Mr. Dellinger's books was $5610.00 plus 7% profit equals $6032, leaving $1468.00 to land. Total improvement cost in this area -- this, now, is in the area which was Sale No. 1, was slightly less than that north of it -- $777.00 per site leaving $691.00 to the site, minus 15% profit equals $601.00 per site. Five sites per acre for 50 foot sites, $3005.00 per acre.

And the last sale, No. 14, is 347 McComb Avenue, sold January 10, 1955. This is a 50 foot site. Atlantis Investment Company was the grantor. The grantee was Samuel Davis and Thelma J. -- well, I can't pronounce this name -- S-c-i-f-r-e-s. Legal description, Lots 43 and 44 in Block 28, Interior Heights addition to the City of Cheyenne. Consideration was $7500.00. The improvements were identical to those quoted in Sale 13, indicating total cost including seller's 7% profit, $6032.00, leaving $1468 to land. That, minus the development cost, $777.00 per site, equals $691.00. That, minus 15% profit on the land equals $601.00 per site, indicating five sites per acre, $3005.00 per acre.

Now it's my opinion as I stated earlier -- first, these sales --

148] Q. Just a moment, Mr. Bowes. You are going into residual? A. No, sir, not finished with my comparison. Q. Very well, go ahead. A. These sales did not take place as of August 25, 1955. As has been indicated earlier here, there is quite a difference during a development, in the value of developable land. Consequently I attempted to estimate what differences there may have been in the valuation during the period of these sales, again to bring each one up to August 25, 1955, which is our appraisal date.

I found first that Sale No. 2, which was to the same gentleman or company as Sale No. 1, was made five months after Sale No. 1 at -- just a moment now -- at 26% more. Sale No. 1 was made at $2265.00 per acre, as I have quoted here. Sale No. 2, $2869.00, and that difference equals 26% of the No. 1 Sale, indicating an increase in value of 26% over that five month period. That was applied consequently to Sale No. 1. That, together with the difference as indicated between October of 1954 and August of 1955, an additional 10%. 35% was applied to the sale price as indicated in Sale No. 1; 10% applied to the sale price as indicated in Sale 2. Sale 3 and 4 took place in April and May of 1955. A difference of 5% was applied to bring those to our August 25, 1955 date. Sale No. 5 took place in September, 1955. No adjustment was applied there. In Sale No. 6, which was in June of 1955, 5% applied. Sales 7 and 8 took place in January and February, 1955. Those were adjusted upward 10% for the difference in value during that time. Sales 9 and 10, 11 and 12 took place in February and March of 1956. They were adjusted downward 5% by comparison to the subject. In other words, the sale prices are considered higher or were higher in February and March, 1956, than they were in August, 1955. So 5% was subtracted from each one. No adjustment indicated for 13 which took place in August, 1955. And in January, No. 14 took place in January, 1955 and 10% was added to that one to bring it up to date. Consequently each of these adjustment factors was applied specifically to the acreage figure that was quoted here. Again I consider the area toward the south and generally in this area (indicating) better than this area (indicating) as far as housing is concerned. Where single family dwellings go, the best way to develop that land is to the most expensive dwellings that are generally in conformity with the neighborhood. You wouldn't build, for instance, a $12,000 house in a $9,000 neighborhood because part of the difference in that cost would be lost it's an overimprovement. Consequently this range is generally from $11,000 to $12,000 and as I said this one (indicating) from $7500.00 to $9000.00. Consequently the land in this area (indicating), which falls again into very even proportion in Cheyenne, as it does in Denver and other places, is worth more for residential use than the lands in the -- than the subject lands in the same use. Consequently all of these -- the subject land is considered 30%

poorer than this by this comparison. And it is considered 5% poorer than these sales as raw land and as specific sites, again each one in comparison to the subject, partially because of this proximity to a relatively secondary housing area east of the subject. These adjustments were applied to each of the acreage indications and two adjustments were made for the condition of utilities and location of utilities. These concerned only Sales 1 and 2. Our subject, in my opinion, is 10% more valuable because of the fact that the utilities generally surround the subject. We have -- excuse me, I'm thinking here of water lines, gas lines, sewer lines and storm and sanitary sewer lines which are available to the subject and which were not available to Sales 1 and 2 when those sales took place. That adjustment was applied.

150] Now as to its useful tension, I find that considering the sites, again in my opinion this site can be zoned, or subject property can be zoned Residence B throughout. I think that's its highest, best and most profitable use. Three-family units have been suggested on a lot and a half of ground, which exceeds the minimum requirements in the zoning ordinance, and I'm going into the size of my unit I have used in a moment, but using that figure, I find that we get 3.3% more efficiency, or 3.3 times more square feet of living area on an equal number of square feet of land in a Residence B, three-family unit use than we would in a Residence A. However, that isn't the whole story. Normally and in Cheyenne Residence A parcels represent some 14% to 16% of the total sale price of the property improved with a dwelling. That follows in both of our areas, whether they would be $7500.00 or $12,000. The proportion which is left to land is approximately the same. In multiple unit income type properties, the proportion of land to the total value is some 5% to 5 1/2%. Thus we get, say, 5-1/4% as compared to 15%, or 2.9 times less efficiency in proportion as compared to the Residence A. The difference in those two figures is .4, which indicates a 40% difference in the value of Residence B land as compared to Residence A land. That was applied to our indications, together with these other adjustments indicating the following: It might be helpful if I would indicate these on the map.

151] Q. I would like to have you indicate them on the map.

A. The adjusted comparative acreage indications I find, again comparing the subjects specifically to each

of the comparable sales, were as follows:

Sale No. 1, $4646.00 per acre.

Sale No. 2 - that is this one and this one (indicating)--$4817.00 per acre.

Sale No. 3 and 4 were the same, $4851.00 per acre.

Sale No. 5, $4420.00 per acre.

Sale No. 6, $4190.00 per acre.

Sale No. 7, $2985.00 per acre.

Sale No. 8, $5077.00 per acre.

Sale No. 9, $2552.00 per acre.

152] Sale No. 10, $4654.00 per acre.

Sale No. 11, the same, $4654.00 per acre.

Sale No. 12, that was the same, $4654.00 per acre.

Sale No. 13 was $4232.00 per acre.

And No. 14 was $4651.00 per acre.

Now the obvious value brackets I have indicated by twelve of these sales would exclude the two lowest ones. Consequently sales indications, comparative indications No. 7 and No. 9 were excluded from the comparison. I don't use averages, and for that reason they must be taken out. $2985.00 and $2552.00 were eliminated from the comparison. The balance of the sales, indicating a bracket, a close bracket of from $4600.00 to $4900.00 per acre for the subject land by comparison.

Now, to use again merely as a check of my comparative indication, this use as three-family buildings was considered further on what we call a land residual application, having in mind that the value of any parcel of land is based on what it will produce in its highest, best and most

productive use. It's my opinion -- it's my opinion that this property should be developed to three-unit residence buildings about as follows:

They should be frame, one-story, with a very small basement for laundry and storage only, with concrete footings and foundations, wood frame, double-hung windows, No. 3 secondary grade of oak floor in the living, dinette and bedrooms, linoleum in the bath and kitchens, fir-treated wood, painted plaster; seven light fixtures with seven outlets per unit, plumbing of Standard or equal chrome with tub or shower, 30-gallon Mission or equal hot-water heater; insulated, rock wall insulated ceiling, should be heated by what is referred to as a No. 3 Bryant gas-fired or equal
153] forced-air furnance; stove and refrigerators furnished, landscaping installed and each unit is to have one ten by twenty carport structure or three per three-family unit, on the alley. Each three-unit building will contain approximately 2214 square feet of gross area on one floor, which is 738 square feet per unit gross. This will include a living room sixteen by thirteen, bedrooms eleven by twelve and ten by twelve, a dinette and kitchen which will total thirteen feet by ten feet, and a bath five by seven. Those figures total 625 square feet. The difference between that and 738 will be taken up with hallways, closets, exterior walls and so forth. Zoning required is Residence B, which calls for 1250 square feet of land per unit for three or four-unit use. Consequently, the zoning requirement would be 3750 square feet. We are allocating 4687 1/2 square feet of land for this three-family unit.

The tenancy plan --

Mr. Hickey: I wonder if that would be a good place to break for lunch, Your Honor.

The Court: Yes, if it's a convenient breaking point, I would ask that we recess. Will counsel come to the bench?

(At bench:)

154] The Court: Two matters I desire to mention. I have been reflecting over my ruling on your objection -- that is, on your question to part of Mr. Arp's cross-examination as to

the price paid by him for the tract of land including Van Tassell development. The same question could well arise with reference to the examination of this expert, particularly since he has a number of samples over a large period of time. I am in grave doubts as to whether my ruling was correct and I will ask you gentlemen, to the extent that you may have them consistent with your nourishment during the noon hour, to see if you can find any authority on that.

Mr. Gray: Well, we have got figures, Your Honor. They indicate -- we feel the general rule is that what the landowner paid may be relevant and material if it is not too remote and if the condition of the land is in approximately the same condition it was in at the time of the purchase. But now, you see, our position is that even aerials here in addition to the point that Mr. Hickey raised yesterday, that even the aerials disclose a tremendous change in the condition of that land from the standpoint of value because of those developments.

The Court: Well, the thing that's bothering me now is that the testimony of this expert involves very material changes, construction and reconversion, to bare land values or raw land values. And the abstract question of whether that is relevant as original evidence isn't especially involved, because if it has some bearing upon the witness's mental processes, it's all studied. The latitude of cross-examination probably might be a little broader than the latitude Mr. Raper intended to put that in as original evidence. I am sure we are all interested in this case and would not like to have the record subject to reversal, if we can help it so that, on perhaps a matter that would be no great influence as an actuality if it were explored, might not result because of exclusion in retrial and considerable waste of time. I ask you to give it a little reflection on the noon hour.

155] Mr. Hickey: I will get something, Your Honor, on my objection, which is the proposition that the only sale I know available is the sale of 687 acres and now it can be confined to 487.

The Court: Well, I'm not so much concerned with that now, as I reflect on it, as the problem of remoteness in

time and with your expert's net figure by converting -- and it may be without prejudice at all to any changes, if any, that are material in the nature of these properties sold, or in point of time, can be taken care of. The question may arise later on in the afternoon. I thought I should mention the thing that I had in mind.

Mr. Gray: We would feel it would be very prejudicial.

The Court: Well, of course Mr. Raper is much in your position, too. He doesn't want error and if he insists upon it, why, he may be entitled -- but I won't reach the conclusion until I get your help.

Mr. Raper: That's what bothers me. It's a narrow
156] question. It has to be closely restricted.

The Court: And it might be helpful to the Court and the Jury in view of the expert testimony. You reflect upon that and see if you want to raise the question and invite error.

Mr. Raper: I'll do that.

The Court: One other question, I noticed in the paper last night and again this morning with reference to this case. Thus far I see nothing which would be calculated to affect the Jury. We don't know what is going to happen here after. I didn't mention it before to the Jury in my admonition because sometimes if you mention those things it's just an invitation to have them in pursuit of the papers. I will take your judgment on whether I should give my usual admonition and add the thought that they should refrain from reading anything about the case or whether we should leave the admonition as it now stands.

Mr. Raper: Well, it doesn't make any difference to me. These newspapers come up and they say well, what's going on and I tell them, well, the Jury was selected at noon --

The Court: I am not talking about that phase of it. I am talking about what I should do with the Jury.

Mr. Raper: They dig up this whole publicity and publish it.

Mr. Hickey: I planned to ask the Court during the consideration of the instructions of the Court, as part of the instructions that at that time he might point out to them that anything they might have read in the newspaper is -- we have got to be practical about this and we know if anything then or now is objectionable and we agree it is objectionable, the Court may instruct them.

157] Mr. Raper: That's good --

The Court: I think that's a good suggestion and I ask you to help follow it. I ask you to bear that in mind.

Mr. Hickey: Yes.

The Court: Thank you.

(To Jury:)

The Court: Ladies and gentlemen, we will take our noon recess until 1:30 this afternoon. I am sure you will bear in mind the admonition of the Court as heretofore given you, which I won't repeat. Merely by way of emphasis because it is of vital importance, I summarize by asking you to keep your minds free from any outside or collateral consideration whatsoever.

* * * * *

Q. You are the same Mr. Eugene Bowes who was on the stand this morning? A. I am.

Q. And at the time of recess you were on the stand testifying? A. Yes, sir.

Q. You are reminded that you are still under oath and your obligation remains the same to tell the truth.

A. Yes, sir.

158] Q. Now, Mr. Bowes, I wonder if you would describe the subject lands for the record. Put a description incomparable to the description you have given about the sales. A. Yes, sir. The subject parcel is south and west of down town Cheyenne, approximately one mile driving. It

includes approximately seven blocks of land as platted. It is uneven in shape. It has a gross area of approximately 30.9 acres which is platted to 299 lots, each being twenty-five by one-hundred twenty-five. Blocks are 600 feet long. 60-foot streets are included in the plat and 15-foot alleys, which run north to south through the blocks, leaving approximately 934,375 square feet of usable land within the site. I have the written description. Would you like that to be read?

Q. Do you have a description as to lot numbers?

A. My legal description is not by lot and block.

Q. I would like it, if you could, on a lot and block basis. A. All right. I believe I can do that. May I get something from my brief case? The subject includes all of Blocks 15, 16, 17 and 18 and a northerly portion -- again I don't have this by lots in these blocks -- of Blocks 24, 25 and 26, and an uneven southerly portion of Blocks 1, 2, 3 and 4 in our sub-division.

Q. All in Interior Heights? A. All in Interior Heights.

Q. Of the City of Cheyenne? A. City of Cheyenne.

Q. Now you have been in Court since the beginning of this trial? A. Yes, sir.

Q. And you have heard the testimony of every witness
159] and you have been present for the entire testimony and cross-examination? A. That's correct.

Q. Now this morning when the Court recessed, I believe you had just completed the physical condition or description of the proposed improvements that would be placed on there to prove the land values. Would you continue from there?

A. Yes, sir. The tenancy plan and rental is considered to be seventy dollars per month per unit, with a tenant paying utilities in addition to that figure, with the landlord paying for all maintenance, repairs, taxes, water, insurance and so forth. This project as planned would include these units, 740 square feet each, the total cost was, including carrying charges, would equal -- this was checked with my cost estimator in Denver -- would equal $7.00 per square foot or $5180.00 per unit. The garage -- the carport I should say, for each unit would total 200 square feet and it would cost an additional $2.00 per square foot or $400.00. I figured landscaping at $100.00 per unit and again contractor's profit at 7%, making a total of $6078.00 per unit, or a total cost for

the entire project of approximately $3,630,000 for improvements. I figured the remaining economic life of these improvements new of 50 years, and it's my opinion that this would form an interesting investment in the current market and foreseeable market at 6 1/2% interest net after capital recapture or depreciation items. In this procedure I found that this project completed would earn gross per month $41,790.00 or $501,480.00 per year. Vacancy and credit loss were investigated. My conversation with the manager of the present unit indicated this: There is presently a vacancy of nearly 20% in the Van Tassell project. However, they offered the suggestion that the vacancy had been not over 1 1/2% to 2% until all of this litigation came up. They felt that there was still a need for those units or some units and that tenants were available for it but the tenants apparently had been worried about the prospect of moving or some re-arrangement, and the vacancy rate went up following that. There had been little before. I am inclined to think 5%, which if applied, would not be experienced immediately in the clean, new improvements I contemplate. However, it is reasonable and right in my opinion that 5% should be figured because it is considered a reasonable vacancy in a multi-family operation. After 5% vacancy, I found what I call effective gross income or actual collected income $476,406.00 per year; expenses, real estate tax based on $200.00 per lot, after consultation with the assessor of the City of Cheyenne, that totals an assessed valuation of $59,800.00. That, at 51.88 mills, which is the current mill levy, equals $3,102.00 per year. The assessed valuation of the improvements was estimated after conference with Mr. Boyd B. Erickson of the State Board of Equalization. It's from this office that assessed valuation of improvements in Cheyenne are made. They use the so-called Beck system, which is based on 1939 and 1940 costs. He suggested that the Beck index would indicate $2.80 a square foot assessed valuation for the subject, which is modified by local index of 1.082, indicating $3.19 per square foot, not for the present improvements but for the hypothetical improvements I have contemplated. That makes at $3.19 a square foot a total assessed valuation of dwellings and garages of $1,500,000 per year. Our annual tax bill, $77,871.00, or total land and improvement real estate taxes $80,973.00, which I have rounded at $81,000.

161] Fire and extended coverage insurance costs were based

on actual rates quoted for the approved roof, frame structure, 80% cost insurance was figured and discounts for three year coverage were allowed, indicating an annual insurance cost per year per hundred of 34.5 cents, which was applied to 80% of the insurable value of the subject, which is $2,686,500; total insurance costs per year, fire and extended coverage, $9,300. Maintenance and repairs were based on half of one month's rental or $20,895.00 per year which I rounded to $20,900. Water, based on $17.00 per unit, which is slightly above the present water charge per unit in the present Van Tassell operation, $10,149.00, which I rounded to $10,150.00. Replacement reserves were figured on roof and sheet metal cost for 5600 squares, that's 100 square feet at $12.00, with ten year life, at $6720.00 per year and total replacement reserves regarding things that will wear out faster than the improvements, certain plumbing items, certain items in the heating plant, $2985.00, or a total of $9700.00 per year.

162] Management was figured at 5% of the effective gross income, which is $23,820.00, or a total of $154,870.00 of expense. This was considered on a basis of proportion as compared to other properly improved multi-family operations. It is proper and within the proper brackets that our total expense should equal somewhere from 30% to 40%. This came to a total of 31% of the gross income, excluding vacancy or credit loss. The capital requirements of these hypothetical improvements would include interest at 6 1/2% on $3,630,000 and a return of that amount -- a portion of that amount each year over a 50 year period, at which time I say the improvements will be worn out and valueless. Consequently these capital requirements, including interest and depreciation, total $308,550.00 per year, leaving a net income residual to land of $12,986.00. That figure capitalized at 6 1/2% equals $199,785.00. From this I have subtracted the cost of improvements with -- land improvements within the site. This has to do with water meters, taking water to each site -- you see, excluding any water or other utility improvements that are presently on the site -- water meters $896.00, at $4.50 each; water, $9950.00; storm and sanitary sewers, $14,925.00; paving cost, streets and so forth at $21,890.00; or a total land development cost of $47,661.00, leaving an indicated value of the subject land of $152,124.00. Considering this land

residual and my comparative conclusions, it is my opinion that the value of this property, 30.89 acres, is $4,856.00 per acre, or $150,000.

Q. Then it is your conclusion by virtue of the use of both procedures outlined that the value of the subject land as a fair market value is $150,000? A. That's correct.

163] The Court: As of what time?

Witness: As of September 25, 1955 -- or August 25, I beg your pardon.

The Court: All right.

Witness: August 25, 1955.

Mr. Hickey: You may inquire.

Cross-Examination by Mr. Raper:

Q. Mr. Bows -- A. That's pronounced Bowes, sir.

Q. Bowes, excuse me. In your investigation of land values in this area and with particular reference to the area that surrounds the Van Tassell lands over there, did you find any bulk sale of acreage land actually sold at $4850.00 per acre that you say here is the market price of this land? A. I found no sales as of August 25, 1955. But I did find sales at an earlier date than that.

Q. All right, what was your earlier date?

A. One date was May 27, 1954, which is fifteen months before our appraisal date.

Q. Was that $4850.00 per acre? A. No, it wasn't.

Q. All right, how much was that per acre?

A. That was sold, considering the grading cost which
164] was --

Q. I am interested in the actual consideration.

A. Sold for $80,000.

Q. Forty acres for about $80,000? A. It was 30.955 acres.

Q. All right, sir, and that's the only one that --

A. No.

Q. Now I am asking you, did you find any sales, actual, real sales of land in its bulk or naked state for $4850.00 per acre. Did you find any --

A. I found none. That's correct.

Q. All right. Now this beautiful housing project that you envisage as being placed here on these subject lands, when did you compute your figures for that? A. I computed my figures as of August 25, 1955, two weeks ago.

Q. Two weeks ago? A. That's correct.

Q. Did you find that any real substantial land existed for the construction of any such a housing project in Cheyenne, and with particular reference to this vicinity, as of August 25, 1956? A. I found none.

Mr. Raper: No further questions.

Mr. Hickey: That's all. Could we have just about three minutes to confer, Your Honor? This is our last witness and before closing our case I would like to confer. I would like to take Mr. Bowes to the board and let him put his value conclusion in the subject on the exhibit, Your Honor, and at that point we will conclude our case.

165] The Court: That may be done.

Redirect Examination by Mr. Hickey:

Q. Would you go to the board? A. This is 30.89 acres at $4856.00 per acre (indicating), which is $150,000.

Q. Now that conclusion, Mr. Bowes, is based upon your consideration of the lot sales which were related back to an acre basis? A. The items which would be considered by a typical prudent purchaser of this land.

Mr. Hickey: Thank you.

Mr. Hickey: That concludes our case.

* * * * *

166] The Court: You may proceed.

(Mr. Raper made an opening statement to the Jury.)

(Government's Exhibit Nos. 1 and 2 were marked for identification.)

Mr. Raper: May it please the Court, I have discussed this matter with Mr. Hickey and Mr. Gray and they are willing to stipulate that the map of the City of Cheyenne marked as Plaintiffs' Exhibit No. 1 for purposes of identification, and a blow-up of a portion of that same map marked Plaintiffs' Exhibit No. 2 for purposes of identification may be entered into evidence subject to it being made clear that the date on this map is explained. The date is February 10, 1956, and the only changes on this map which took place subsequent to August 25, 1955, is that Blocks 11, 12, 13 and 14 have been zoned to Residence B, and that there is a small block near the viaduct -- near a viaduct, Block 554, half of which block has been re-zoned and in the Logan shopping area on Logan Street, a residence has been re-zoned to business. That excepting for those changes, this map correctly reflects the relative location of the areas that it purports to demonstrate.

167] The Court: With that understanding, in the absence of objection, Plaintiff's Exhibit 1 and 2 are received in evidence.

Mr. Raper: Thank you, Your Honor.

T. H. BALDWIN, called as a witness on behalf of the Government, testified:

Direct Examination by Mr. Raper:

Q. Will you state your name to the Court and Jury, please? A. T. H. Baldwin.

Q. Where do you live, Mr. Baldwin? A. Cheyenne.

Q. And what is your occupation? A. An engineer.

Q. You are a registered and licensed engineer, are you?

A. Yes, sir.

Q. How long have you been engaged in the business of engineering? A. Fifty-five years.

Q. Have you ever been called upon by the Government to make a survey of certain lands known as Van Tassell?

A. I have.

(Government's Exhibit No. 3 was marked for identification.)

Q. I hand you here Plaintiff's Exhibit No. 3 and ask you to state whether or not you know what that is?

A. Yes. This is a property line map which I made for the Government is 1943.

168] Q. And does that map correctly reflect the area of this Van Tassell Terrace? A. It does.

Mr. Raper: At this time, Your Honor, we would like to offer into evidence Plaintiffs' Exhibit No. 3, which is a plat of the area known as Van Tassell Terrace, and which reflects the survey of this engineer.

The Court: In the absence of objection, it will be received in evidence.

Mr. Raper: Thank you, Your Honor.

Q. Now, Mr. Baldwin, does Plaintiffs' Exhibit No. 3 bring to scale or balance the area embraced by Van Tassell on the ground? A. It does.

Q. And what area does that contain? A. 30.89 acres.

Q. Now, have you been called upon subsequently to furnish a further certification or plat of survey of that area? A. I have.

Mr. Raper: May I have the Court File, please?

Q. I hand you -- I don't believe this needs to be marked for identification, Your Honor -- I hand you here the Court's File which has attached to the declaration of taking a document which you are now looking at it. Can you tell the Court and Jury what that is?

A. This is a copy -- reduced copy of the original map and of the map that I made last year for the purpose of putting certain other things on the original.

169] Q. All right now, when you refer to the original, do you refer to the Plaintiff's Exhibit No. 3? A. Yes.

Q. Is the plat, as shown in the Court File here, which is a reduction, accurate in all respects and up to date? A. It is, except that it is a reduction.

Q. That is a reduction in size from the original plat?

A. Yes.

Q. All right, sir, now Mr. Baldwin, can you tell me whether or not Plaintiff's Exhibit No. 3 and the reduced

plat shown in the Court File correctly show the following legal description: "All that tract or parcel of land lying and being in the southwest corner of Section 6, Township 13 north, Range 66 west, 6th Principal Meridian, in the City of Cheyenne, Laramie County, Wyoming, and more particularly described as follows: Beginning at the southwest corner of Section 6; thence north 58 degrees, 35 minutes, 15 seconds east 2042.75 feet to the true point of beginning; thence north 0 degrees, 7 minutes west 300 feet to an iron pipe; thence south 89 degrees 53 minutes west 380.44 feet to an iron pipe; thence north 0 degrees 31 minuts west 900 feet to an iron pipe; thence south 83 degrees 32 minutes east 1310.65 feet to an iron pipe; thence south 0 degrees 7 minutes east 1050 feet to an iron pin; thence south 89 degrees 53 minutes west 915 feet to the true point of beginning, containing 30.89 acres of land more or less. A. That is substantially the same thing.

Q. When you say substantially, is it the same thing?

A. It isn't identical. It describes exactly the same property, but that -- this description here is shortened.

Q. It describes the same property but in different --

A. It describes exactly the same property.

Q. In different words.

Mr. Raper: I am sorry to take the time for this, Your Honor, but it's a matter that has to go into the record for appeal, to establish the record of taking here.

Q. Now, Mr. Baldwin, have you made any recent survey of this area known as Van Tassell? A. I have.

Q. At whose request did you make that? A. At yours.

Q. And when did you make it? A. Last Friday.

Q. And pursuant to that request, what did you actually do? A. We reset the corners as described in the description that you have just read and set points.

Q. Are you now in a position to identify those points?

A. We are.

Q. Are you prepared to place flags at those points in the event anyone wanted to go out and observe?

171] A. I am.

Q. And how would they recognize those flags?

A. We proposed to put up lath with red and white cloth on them.

Q. And they will be readily discernible?

A. They will if we can protect them from the kids long enough for anybody to see them.

Mr. Raper: Thank you.

The Court: I'm surprised to learn that children in Cheyenne are the same as in Salt Lake City, Utah.

Mr. Raper: Any questions?

Mr. Hickey: No.

T. P. BLACK, called as a witness on behalf of the Government, testified:

Direct Examination by Mr. Raper:

Q. Will you state your name to the Court, please?
A. T. P. Black.

The Court: You can talk to the Jury also.

Q. Mr. Black, would you also talk to the Jury? T. P. Black? A. T. P. Black.
172] Q. Where do you live, Mr. Black? A. 416 West Twenty-second, Cheyenne.
Q. In Cheyenne, Wyoming? A. Yes.
Q. What is your occupation? A. I am a general contractor.
Q. And how long have you been in the general contracting business? A. Close to forty years.
Q. Have you ever been engaged in any other form of business? A. Well, I was raised on a farm down in Missouri.
Q. Have you ever been in the subdivision business?
A. In the what?
Q. In the subdivision business. A. Yes.
Q. Have you ever created a subdivision? A. Yes, I have.
Q. What subdivision did you create? A. Well, we have what we call the Black-Leisher subdivision, carries about 115 lots, I put in for the city in 1923, May. And I built around 70, 75 houses on it now.

Q. What year was that? A. We came into the city in 1953.

Q. 1953. A. What did I say?

Q. Now I wonder, Mr. Black -- A. Yes, sir.

173] Q. There are two maps over here on the board. Would you go to those maps and point out your addition, if they are there? A. Yes, sir.

The Court: I believe, Mr. Black -- did he say '23? It's clear that he meant 1953, I take it.

Mr. Raper: Yes, sir.

Q. Could you step to the other side, so that the Jury could see, please? All right, sir, now point it out on the other map.

(Witness indicates on exhibit.)

Q. All right, sir, Mr. Black, you can go back to the witne. stand now. A. Thank you.

Q. When did you buy the land for that subdivision?

A. I believe it's March, '53.

Q. Well, do you remember that it was in March of 1953?

A. Yes. March, I believe, 1953.

Q. All right. How many acres are in that subdivision?

A. Twenty-five acres, point 54.

Q. All right, sir, now from whom did you buy the land for that subdivision? A. From Mr. Leisher.

Q. And what is his full name? A. Charles.

Q. Charles Leisher? A. Yes.

Q. How much did you pay him for that land?

174] Mr. Hickey: Just a moment, before you answer that. We object to the question on the grounds that the proper foundation has not been laid. It is our understanding that the conditions in the area, the evidence so far shows they have changed materially since 1953, and that the sale of this land would not be -- or the pruchase price of this land would not be a comparable sale. We say that there is no similarity of character and that the general conditions as are currently in evidence clearly shows that there has been material changes in the immediate vicinity since that time and prior to August 25, 1955.

The Court: I am of the opinion that that matter goes to the weight or the effect of the evidence and that the evidence is admissible. I would instruct the Jury as to the bearing and the necessity of considering changed conditions at the appropriate time.

Mr. Raper: Thank you, Your Honor.

Mr. Hickey: And for the further reason, Your Honor -- I left this out -- that it is too remote.

The Court: That may be deemed part of your objection. The addition to the objection is overruled.

Q. All right sir, how much did you pay Mr. Leisher for that land? A. I paid him $14,820.00.

Q. All right, sir, now since the time that you bought that land, what have you done with it? What have you done with that land since you bought it? A. Well, of course I put it into the city and put it into lots and built about 75 houses on it. Is that what you mean?

175] Q. You, yourself, have built about 75 houses?

A. Yes. I have sold a few lots on it.

Q. You have sold those houses? A. I have sold a few lots.

Q. And you sold the houses that you yourself built?

A. That's right.

Q. Have you sold some individual lots? A. Yes, I have.

Q. Would you state to whom and when and how much they paid you for them? A. Well, I sold two lots to a man by the name of Cousins. They were facing that power plant over there.

Q. Would you go to the map and point where that power plant is?

(Witness indicates on exhibit.)

Q. All right then, the two lots that you sold to Mr. Cousins are located right around in there, are they?

A. Yes, in this block here (indicating.)

Mr. Hickey: For the purpose of the record, could it be marked or identified?

The Court: It would be more meaningful if it could. What block could be indicated, or a marked place -- might be more convenient to give the number, if they can be discerned from the map.

176] Q. Do you remember the numbers of the lots?
A. Yes.
Q. All right, sir.

The Court: Can you tell the numbers from the map, itself, Mr. Black?

Mr. Raper: The lots aren't numbered on the map.

The Court: Oh, they are not on the map.

Mr. Hickey: They have the block number.

Mr. Raper: They would be shown on this other map.

Witness: Lots 9 and 10 in Block 8.

Q. That's 9 and 10 in Block 8.

The Court: If you desire further identification, I'll permit you to do that on cross-examination.

Mr. Hickey: All right, sir.

Q. All right, sir, now when did you sell those lots to Mr. Cousins? A. Well, he finished paying me for the lots May 17, '54. He probably bought them three or four months ahead of that, but that's when he paid me for them and got the deeds.
Q. All right, sir, how much did you charge him for those? A. $1050.00 a piece.
Q. That's $1050.00? A. That's right.
Q. Were those lots improved in any way?
A. Curb and gutter.
Q. Was there sewer up to them? A. Yes.
177] Q. And water? A. Yes.
Q. And was the street surfaced? A. The street was graded, it wasn't surfaced.
Q. All right, sir. Now did you sell any other lots?

A. Yes, we did.

Q. To whom? A. Well, I sold Kermit Moody four lots.

Q. All right, sir, what were the lots numbers and block numbers on those lots? A. That was in Block 5.

Q. And what lot numbers? A. Well, you see there was an old house in there -- on over on Lot 13 and I took a little of 13 and those lots were divided back into 51 foot lots, and got four, we will number them 13, 14, 15 and 16 in Block 5.

Q. All right, sir. A. But they run in some fractions.

Q. What was the size of the lots you sold?

A. 51 feet.

Q. In other words you sold him four 51 foot lots?

A. That's right.

Q. But they wouldn't exactly fit those lot numbers?

A. No, they are off just a little on account of the old house in there. Run into fractions. But he got 51 foot on each lot.

178] Q. All right, sir. When did you sell him those lots?

A. Well, around October 23, 1954.

Q. All right, now how much did Mr. Moody pay you for each of those lots? A. $1250.00 apiece.

Q. All right, sir, now did you sell some other lots?

A. Well, I sold -- they have all been sold for $1250.00 apiece, what I sold. I sold Scotty Harris four. He paid $1250.00 apiece for those.

Q. All right, what was the lot and block number?

A. That was down on Derr Avenue, I have Block 6 and Lot 3, 4, 5 and 6 in Block 6.

Q. All right, sir. And your sale price was $1250.00 each? A. That's right, yes.

Q. Now who are these people that you are selling these lots to, who are they? A. This was Scotty Harris I sold those to. He was a contractor.

Q. Was his business contracting? A. Yes, he built houses on them and sold them.

Q. How about the others? Did they build houses, too?

A. Yes.

Q. Did you sell any other lots? A. One more down here, Lot 8, I sold. That was sold in -- these lots was -- the lumber company bargained for these lots and bargained for the block, but they didn't use the whole block. He let Scotty Harris have four of them and there was one left down there he wanted, he bargained for and he took that

over and built it in '55.

179] Q. And paid you? He paid you, did he? A. Yes.

Q. Cassidy? A. No, the Carey Real Estate Company paid me for the lot when it went through.

Q. I see. You got $1250.00? A. I got $1250.00 and they put curb and gutter on the corner lot. I wouldn't let it go for $1250.00, I made them put the curb and gutter in and they did and give me $1250.00 for the lot.

Q. All right, sir. A. I believe his name was Cassidy on that.

Q. What is the depth of those lots? A. 100 feet.

Q. 100 feet? A. That's right.

Q. Now, when you bought this land were there any structures of any kind on it? A. One house on it.

Q. What kind of house was it? A. Well, wasn't too good. I had to do about $2000.00 worth of repair on the house. That was, of course, in with the deal. That left -- and I sold the house. I suppose you want to know.

180] Q. All right, sir, go ahead. A. You want me to go ahead?

Q. Yes, go ahead and explain what you did.

A. I sold the house for $8000.00. I paid a $400.00 commission on the sale. Mr. Hebert sold it, he can verify that. That leaves $7600.00 for the house and I spent $2000.00 on the house, left me $5600.00 which I deducted from the $14,820.00, leaves the land at $9220.00.

Mr. Hickey: We object to this and ask that it be stricken on the basis that -- on the evidence on the sale of land where there is a division of this kind, allocating price is improper, it's improper testimony. He has attempted to assess a lower value now to this land which he heretofore got as a lump sale in the amount of some $14,000. Now he is attempting by this testimony to subtract some $5600.00. We object to it and ask that it be stricken from the record.

The Court: Overruled. I consider it of rather remote and of little weight, but it's a matter that may be considered for whatever it is worth. Proceed.

Mr. Raper: Thank you, sir.

Q. Now, when you sold that house and lot for $8000.00 --

sold the house for $8000.00, that included the lot, did it? A. That's right.

181] Q. How big a lot was that? A. Well, that lot was -- I'm not right sure, but something like about 63 or 64 feet. That is, the way the house was built it kind of scattered out and took in quite a bit of territory. When I laid it out we had to give it enough ground on both sides to satisfy the city. I think it run close to 60 feet. That's what cut the lots Moody bought down.

Q. This would be around 61 feet? A. Must have been 62 or 63 feet.

Q. But that went with the house? A. Yes, I had to put it on there to take care of it, because the house was spread out pretty wide.

Q. Did you fix a value on that lot? A. Well, no, not exactly. I just sold the house out for $8000.00.

Q. That was a package deal? A. It was a package deal, sure.

Mr. Raper: All right, sir. No further questions.

Cross-Examination by Mr. Hickey:

Q. Now, Mr. Black, you have been in Court yesterday and today at all times, haven't you? A. Yes, sir.

Q. And the Leisher-Black area that you have described is the Leisher-Black area that is shown on our Exhibit A, isn't that correct?

Witness: I can't hear him.

The Court: You will have to speak a little louder.

182] Q. Mr. Black, you have been in Court yesterday and today both, haven't you? A. That's right, but I don't hear --

The Court: He was probably referring to the other testimony.

A. I don't hear a word of this up here from back there.

Q. I see. A. Not one word of it.

Q. I see. Well now, Mr. Black, you can be seated, if you will. You're not having any more difficulty hearing

me than you did Mr. Raper, are you? A. No, not till you turned.

Q. Well now, Mr. Black, would you look at what we have designated as our Exhibit A which is the map on the blackboard there? A. Yes.

Q. And is that Leisher-Black location shown on there exactly the same as the one you identified on here (indicating)?

A. You want me to look?

Q. Yes, sir. A. Thank you.

Q. Mr. Black, on this one (indicating) now one further thing, Mr. Black, as long as you are up, I wonder, do you recall the other exhibit that Mr. Bowes testified from? It's on the reverse side of this. Let me show it to you.

A. Yes, sir.

Q. Now you will note, Mr. Black, on what has been designated as Defendants' Exhibit K an area which has been indicated as the Leisher-Black area. Does that conform with your understanding of the one on the plat of the city?

A. Looks to me like it does.

183] Q. There are no corrections that you would suggest?

A. No, I can't see anything wrong with it.

Q. Yes, sir. A. You've got the blocks all in and streets. I don't see anything wrong with it.

Q. It's accurate. Now going back, Mr. Black, to the land which you purchased, what was the condition of the topography of that land? What did the surface look like when you bought it? A. Well, it didn't look too good.

Q. Well, what was wrong with it? A. Well, there was a bunch of poles on it for one thing.

Q. And did it require considerable expenditure of time and money to put it into condition? A. Well, no, it wasn't too bad that way, I guess. What I had on it was two rows of poles through there with high tension wires on it and in order to take care of them -- I did it on the map is the way I did it, I put the poles between the curb and gutter and the property line and got rid of them and then this house set in the street, the way it was laid out. I cut the lots down to a hundred feet and moved them back to a hundred feet, and it wasn't too bad.

184] Q. Now how does the topography of the Leisher-Black area compare with the topography of the Van Tassell Terrace area at the time of purchase? A. That was before there was

any buildings on Van Tassell?

Q. Yes. A. Well --

Q. Would Van Tassell be better or worse. A. Well, the ground would be in better shape, I suppose.

Q. The ground on Van Tassell would be in much better shape than on Leisher-Black? A. Well --

Mr. Raper: Just a moment, Mr. Black. I think, Your Honor, Mr. Hickey is getting beyond the scope of direct examination. We made no reference with Mr. Black as far as Van Tassell is concerned. He is asking this witness to testify as to the difference between his land and the Van Tassell. We didn't cover that at all.

The Court: Well, I'll let the answer stand thus far. I think the objection is well taken. I think it's not in the scope of the direct examination.

Q. Mr. Black, I notice this area is known as Leisher-Black area. Why is it called both Leisher and Black? Are you and Mr. Leisher partners? A. No, I bought the land from him and I favored him that much, putting his name on it.

185] Q. Now, in addition to the consideration paid, you gave the honor of Mr. Leisher's name being on there?

A. That's right.

Q. Did Mr. Leisher have any part of the subdivision after the date of the sale? Did he have any interest in it?

A. No, he didn't.

Q. He did not. He had no sharing in the profits on your particular sales? A. No, he didn't.

Q. Now, going back to two particular sales, could you tell me the number of the lot which you sold for $1200.00 plus the curb and gutter? A. $1250.00.

Q. $1250.00? A. $1250.00, yes.

Q. What was the number of that lot? A. Lot 8 in Block 6.

Q. Would that be where I am pointing? A. Pardon me, I better look. I suppose you're pointing --

The Court: Now just a minute, you will have to speak loud enough, Mr. Black, so the reporter can hear you and the Jury.

Q. Do you have that lot numbered? A. That's Lot 8 --

Lot 8 in Block 6.

Q. Lot 8 in Block 6. Now one other identification. Would you identify the lot where this house you sold for $8000.00 was? A. Yes, it's marked on here.

Q. Would you tell me the lot number? A. It's on Lot 186] 12 and 13 of Block 5.

Q. Now, going to Lot 8 in Block 6, you say you sold that for $1250.00, is that correct? A. That's right.

Q. And what were the costs of improvements that should be deducted from there? A. I don't know for sure what you mean.

Q. Was there a water cost that you allocated to that lot? A. Yes, there were.

Q. How much? A. $75.00 for water.

Q. And how much did you allocate to that lot for the purpose of sewer? A. Sewer? About $120.00, I suppose.

Q. Now, were there any other charges allocated to that lot? A. Curb and gutter.

Q. But didn't you testify that you sold it with them putting in the curb and gutter? A. On the alley side.

Q. Then they did not put in all the curb and gutter?

A. I put the curb and gutter in on all the lots, but on the corner there was this curb and gutter back to the alley, that adds on to that lot but not the others.

Q. Very well, how much would that add on to the lot, the $1250.00 cost? A. I'd guess it around $180.00 or $185.00.

187] Q. Is that the actual cost of the lot as totally improved, would be $1250.00 plus $180.00, is that correct?

A. I think that's about as close as I can give it to you.

Q. Which would make it then $1430.00.

A. Uh-hmm.

Q. Now, what were the total costs of the curb and gutter against that lot? A. You mean on the value of the lot?

Q. Yes, sir. On all around the lot. A. Well, you would have about 60 foot in front. Is that what you want me to add to it?

Q. Yes, sir. A. About $84.00.

Q. About $84.00? A. Uh-hmm.

Q. And that would be added to the $180.00, would it, to make a total cost of the curb and gutter?

A. On that lot it would, yes, sir.

Q. So that then would make the total cost of your curb and gutter $84.00 plus $180.00, or $264.00, is that correct? A. I believe that's right.

Q. Now, were there any other costs accessed to that lot? A. Well, I have curb, gutter, sewer and water.

188] The Court: Speak a little louder, Mr. Black, please.

A. I have the curb and gutter on and the sewer and the water. And then the price of the land.

Q. Well, the price of the land will not be included for our purposes. A. I see.

Q. We merely want to get what the additional cost to you over and above the value of the land. And you have no more than the three you have given? A. Uh-hmm.

Q. And then that would total to $459.00? $75.00, $120.00 and $264.00.

The Court: Well, you needn't take time in having him recompute your calculations.

Mr. Hickey: Very well, Your Honor.

Q. Subtracting $459.00 from $1430.00, I believe, Mr. Black, leaves $971.00 as the raw value for that lot. Does that sound reasonable? A. Uh-hmm.

Q. Now, how many lots are there in an acre in your particular area? A. Well, I got 25 and a fraction, and -- about 25 1/2 acres, isn't it?

Q. Yes, sir. A. And my plat shows, I think, 125 lots in the whole thing, if you count all of them.

Q. Well then, how many lots would you say for an acre in your plat? A. Must have five.

189] Q. Then if we take five lots times the $571.00, we come to a figure of $4855.00 per acre as a valuation for that land. Does that sound like a proper valuation to you?

A. I beg your pardon, how much valuation per acre?

Q. $4855.00. A. You got me guessing. I don't understand you, I guess.

The Court: Aren't you arguing with the witness now? You have the computation, it's a mere matter of computation. The evidence is in and this witness didn't go beyond stating the sales price. Based upon that you make that

computation. It seems to me that it's argumentative.

Q. Now then, going to your sale to Mr. Kermit Moody, which I understand to be a sale of four lots for $1250.00 per lot, is that correct? A. That's right.

Q. What are the costs of your improvements on those Kermit Moody lots? A. I have $75.00 for water, and curb and gutter should run about $150.00 per lot, and the sewer about $120.00 per lot. And then of course I had the survey out there on those lots, which would cost me about $7.00 per lot. What else could I have there? I don't believe I got anything else outside of interest and taxes later on.

Q. That would make then approximately $352.00, am I correct, Mr. Black? A. That's right.

190] Q. And that would make a raw land value of the Kermit Moody property of $898.00? A. Sounds like it would be right.

Q. Five lots to each acre? A. Four lots, I sold him.

Q. But your acre calculation. A. That's right.

Q. Now then, going quickly to the Joe Cousins sale, that was $1050.00 per lot, is that correct? A. That's right.

Q. And what improvements did that include?

A. Same as what Moody had.

Q. Same as what Moody had, so that would mean that we would subtract 352 from the 1050, is that correct, sir?

A. That's right.

Q. That would have meant $698.00 for the Joe Cousins lots? A. Uh-Hmm.

Q. And then going quickly to the lot sale to Scotty Harris, that was $1250.00 per lot? A. Yes, sir.

Q. And what improvements were on that?

A. Just the same as I had on Moody's lots.

Q. And that would be $352.00, sir? A. That's correct.

191] Q. And that would leave a raw land value of that of $898.00? A. Uh-hmm.

Q. And those sales were all made in 1954?

A. That's right.

Q. With the exception of one sale of Lot 8 in Block 6, and when was that made? A. That's -- them lots were sold -- all them sold to the lumber yard in 1954, but they didn't build them in 1954. They came back and built one and let a man have it. That was east Boise Yard here in town, Killebrew.

Q. They were sold by you in '54? A. Killebrew is the

one bargained for those lots in 1954. I have built one or two since because he didn't use them up.

Q. Now, Mr. Black, these particular poles that you speak of that were on this land and detracted from its value when you took it, where did they lead to?

A. Where did they lead to?

Q. Yes, sir. A. Well, it's one row of them goes to the refinery.

Q. Yes, sir. A. And another row leads into town. I suppose the power plant, as far as I know.

Q. Yes, sir. Where does it come from? A. Well, that's from that big government station out there that sits right in the corner of the tract, southwest corner.

Q. Well now, does the big government power station
192] sit in the corner of your tract of land, or is it contiguous to it? A. No, it don't all -- the main station is across the alley from my land, or across the street, but they have got a corner of my land -- I'll show you on the map -- you know, one of these -- I don't know just how to explain it, but built-up power stuff in there that they use and there's hot wires coming up there, got wires coming out of these, around 1200.

Q. Does that detract from the land immediately adjacent to it? A. I thought it did, that's the reason I sold those two lots, but I don't think it does since.

Q. Well, the reason you sold the lots to Mr. Cousins at $1050.00 then was because you thought the power plant detracted from their value? A. That is right.

Mr. Hickey: That's all, thank you, Mr. Black.

Redirect Examination by Mr. Raper:

Q. Just a moment, Mr. Black. When Mr. Hickey was asking you to state a raw land value, did you take out your profit on that? From that raw land value that you gave?

A. How do you mean?

Q. Well, he only deducted the cost of improving each one of those lots, didn't he? A. Yes.

Q. But you expected to make a profit on that land when you bought it out there, didn't you?

A. I did make a profit.

193] Q. And when you bought it, did you know whether or not you were going to make a profit? A. If I hadn't

known I was going to make a profit, I wouldn't have bought it.

Q. But you bought it in anticipation of selling the land for more than you bought it for. A. I did.

Mr. Raper: That's all.

Mr. Hickey: That's all.

GAYLE DELLINGER, called as a witness on behalf of the Government, testified:

Direct Examination by Mr. Raper:

Q. You are the same Gayle Dellinger who has testified before in this case? A. Yes, sir.

Q. Mr. Dellinger, you testified on the basis of the landowner here that you had bought certain lands in Interior Heights from him. A. That's right.

Q. And that when you entered into a contract to buy those lands, that Defendants' Exhibits F and G were the agreements that you entered into with him. That's correct, is it? A. That's correct. That's right.

Q. All right, sir. In your agreement made on the 27th
194] of May, 1954, Blocks 28, 29, 30, 31, 34, 35, 36 and 37 were covered by it, is that correct? A. That's right.

Q. Has that land been deeded to you? A. Yes, sir.

(Government's Exhibit No. 4 was marked for identification.)

Q. Do you happen to have your original deeds with you?

A. No, sir, I don't.

Q. You were requested by your subpoena to have them. What was the difficulty? A. I'm sorry, Mr. Raper, I didn't understand that I was to bring the deeds.

Q. All right.

Mr. Hickey: Our only objection, Your Honor -- not to the instruments themselves, but to the fact it's cumulative in the record, immaterial.

The Court: It is cumulative. You can exhibit them --

Mr. Raper: No, sir, I don't consider the introduction into evidence of the actual deeds that were delivered to him --

The Court: Do you want to refresh his recollection?

Mr. Raper: No, I want to introduce the deeds into evidence, Your Honor, after they have been identified. It will be documentary evidence which is necessary to complete the record.

195] The Court: Well, I believe he has a right to put in whatever he wants.

Q. I hand you here Plaintiff's Exhibit No. 4 and I'd like to have you tell what those are, please. First I have here warranty deed from Mr. and Mrs. Arp to Gayle Dellinger --

The Court: Well now, Mr. Raper, we're not going to waste time in going into detail.

Mr. Raper: All right, sir.

The Court: If you want to stipulate, if there is no objection to being authentic copies of these --

Mr. Hickey: We have no objection to that. Only objection to it is on the ground --

The Court: And also on the ground it is incompetent and irrelevant. Offer them in evidence.

Mr. Raper: All right, sir. Plaintiff's Exhibit No. 4 is offered in evidence.

The Court: Received.

Mr. Raper: All right, sir.

Q. Now, the consideration paid for the approximately forty acres embraced by these deeds was $80,000, is that correct? A. That was for the land you described to me. I didn't have a chance to look at the deeds, but the blocks

that you mentioned --

The Court: Mr. Witness, you will have to keep your voice so the Jury can hear it all. Will you do that?

196] Witness: Yes, sir.

The Court: All right.

A. I gave $80,000 for the eight blocks that you mentioned to me previously.

Q. All right, sir, now just check the description and then tell me whether or not those are the same eight blocks.

A. I believe they are, sir.

Q. All right, sir. Now you testified earlier today that you had made an agreement supplemental to the one identified here as Defendants' Exhibit No. F?

Mr. Hickey: I would like to object to the question on the ground that it has the tone of cross-examination. He says that, "You testified earlier today with regard to an instrument."

Mr. Raper: Trying to speed it up, Your Honor.

The Court: Well, there is no dispute about that. I think it is a proper means to save time. He did testify about it.

(Government's Exhibit No. 5 was marked for identification.)

Q. Now I'll hand you Defendants' Exhibit G, the supplemental agreement, and also hand you for purposes of identification Plaintiff's No. 5 and ask you whether or not that deed embraces any of the lands in that agreement.

A. Yes, sir, it does.

Mr. Raper: All right, sir. I would like to offer Plaintiff's Exhibit No. 5 into evidence.

197] Mr. Hickey: Objected to on the grounds of it being cumulative in the record and no materiality.

The Court: The objection is overruled. Received.

(Government's Exhibit No. 6 was marked for identification.)

Q. Having reference to Defendants' Exhibit G, I now hand you for identification Plaintiff's Exhibit 6 and ask you what that is. A. This is a warranty deed from Mr. and Mrs. Arp on Lot 5 through 24, both inclusive, Block 12, Interior Heights addition, City of Cheyenne.

Q. All right, sir, is there another deed there --

Mr. Hickey: This is objected to on the grounds that the instrument speaks for itself.

The Court: Sustained.

Q. All right, sir, does that instrument convey lands referred to in your supplemental agreement with Mr. Arp?

A. I'm sure that it does.

Mr. Raper: All right. Plaintiff offers Exhibit No. 6.

Mr. Hickey: Same objection.

The Court: Same ruling. Received.

Q. Mr. Dellinger, do you know the cost of development of each of your lots in the lands that are embraced by these deeds and agreements? A. I have a fairly good conception of what the cost of those particular tracts were in development, in that defined development by what you include in a developed lot, yes, sir.

Q. All right, sir, how much did it cost to develop 198] each lot in Blocks 28 through 31 and Blocks 34 through 37? A. I believe that development cost per lot on Blocks 28 through 37 would be approximately $640.00 a lot plus the necessary grading, but I believe the others were about $675.00 a lot, plus the grading.

Q. Now, when you refer to the others, do you mean those -- A. Blocks 11 and 14.

Q. Blocks 11 through 14? A. Yes.

Q. That was a higher cost of development there?

A. (Nods affirmatively.)

Q. That is a little larger lot, isn't it?

A. Right, sir.

Q. And have you seen the Defendants' Exhibit No. A, which is a plat here in evidence? Does this plat here show the size of the lots in Blocks 11, 12, 13 and 14 correctly? A. I can't see from here.

Q. Would you come here, please?

(Witness examines exhibit.)

Q. Will you take the witness stand. A. It shows them as twenty-five foot lots, which on the original plat would be correct.

Q. All right, sir, has that land been re-platted since that time? A. Yes, sir, it has.

199] (Government's Exhibit No. 7 was marked for identification.)

Q. I hand you here Plaintiffs Exhibit No. 7 for identification and ask you to state whether or not you recognize that. A. Yes, sir, I recognize it. It's a re-plat of the Block 11 and 12, I believe, Interior Heights.

Q. And does that correctly represent the later dimensions of those lots and blocks? A. Yes, sir.

Mr. Hickey: We have no objection.

The Court: Have you offered it?

Mr. Raper: The Government at this time offers Plaintiff's Exhibit No. 7.

The Court: It is received.

Q. All right, sir, I'll now hand you Plaintiffs Exhibit No. 7 and ask you to explain the sizes of lots as they are now platted in Blocks 11 and 12. A. All of the lots in the east half of Block 12, with one exception, are sixty foot lots. The west half of Block 12 all are sixty with one exception. The same thing is true in Block 11. It has one lot in each half block that is not sixty by one-hundred twenty-five.

Q. All right, sir, now when you stated a cost of development for lots in Blocks 11, 12, 13 and 14, what size lot were you referring to? A. That, Mr. Raper, was arrived

at by an overall cost of a tract. May I put it this way,
that the first tract constituted 192 houses, that our
200] overall cost, our entire paving, curb and gutter, water
and sewer cost were divided by 192 lots to arrive at a single lot, which would not be a true reflection on a corner or an interior lot. The price that I calculated on the fifty lots that are included in the parcel of ground that this re-plat is a part of, development cost was arrived at the same way. It would be based on the tract of ground consisting of fifty units.

Q. That would be an average then? A. That's right, sir. To try and arrive at an average cost per lot.

Q. And that average would be applied to either a fifty foot lot or sixty foot lot? A. That's right, unless there were a group of lots in the same unit, I'll say -- but where there were a number of fifties and seventies, our system would calculate that. Where we had one unit of houses, 192 all the same floor plan, all the same size lot. This next group was a different house and a larger house on a larger lot.

Q. But now the $640.00 figure that you gave me on the forty acre portion, that would be for a twenty-five foot lot, or fifty foot? A. Fifty foot lot.

201] Q. Fifty foot. We just wanted to clear that up. I'll hand you here Plaintiff's Exhibit No. 7 and ask you why that re-platting was done? A. There were two reasons, possibly, for it. The land encompassed parts of Blocks 11 and 12 that are not subdivided into lots is rough land. It has some depressions in it that would make it too expensive, too costly to us to use it for housing purpose, to fill those holes and put it into condition that we could use it, would present a cost that would be impossible to use for housing, so it was deleted from the parcel of ground that we bought. The other reason that our sewer, sanitary sewer, our trunk line going out of this piece of ground to the city's trunk line ran down below this depression and the city insisted that we make some arrangement to catch the run-off, the flow of water, of rainfall, to prevent it from going in and taking out the sewer line. Actually we did go against our wishes, because it was an extra cost. But to complete the development and wind up those last two blocks it was necessary that we cut that extra street in to provide for the drainage and to be able to use the ground that's on the south side of it.

Q. All right, sir, now the supplemental agreement applied also to Blocks 56, 57, 58, 59, 66, 65, 64, 63 and 62? A. I believe that's right, sir. There were nine blocks there.

Q. That would have been immediately south of the forty acre tract? A. Right.

Q. Have you picked up those blocks yet under that agreement? A. No, sir, I haven't. Haven't paid for it.

Mr. Raper: Do you have any questions?

Cross-Examination by Mr. Hickey:

202] Q. I am not quite clear as to what agreement Mr. Raper meant when he spoke the last time. Was that an agreement that is in evidence? A. Yes.

Q. Are there any other purchases than the ones that are in evidence by virtue of those two agreements that occurred, Mr. Dellinger? A. There is a portion of those re-plat -- the east half of Block 11, that is not represented in either the original or the amended.

Q. Then that is an additional purchase that is represented on the particular Exhibit No. 7 and -- what was the sale price on that? A. Mr. Hickey, the last sale -- the last part of that block was purchased, I believe, in probably January of '56 and it was encompassed in a group of 17 lots that were left as a result of us cutting that street in and five of those lots were outside the contract. Twelve of them would be in the Blocks 11 and 12. The best I can answer your question, that the purchase price on the seventeen lots that were divided off by this street was $12,000.

Q. And on the balance then, per acre, the ones that were not included in the contracts we have in evidence.

A. The only way I could answer that would be that the seventeen lots at $12,000 would be approximately $700.00 a lot, I believe. On that size of lot I would calculate that there would not be over four lots to the acre or a fraction over, possibly. I would calculate a minimum of $2800.00 an acre.

Q. $2800.00? A. $2800.00 or $2900.00.

Q. $2900.00 per acre. That is the third sale from Mr. Arp,

is it? Was that purchase from Mr. Arp?

A. Yes, sir. I believe you would class it as a sale.

203] I had not realized myself, Mr. Hickey, that that half block was not included in either one of the contracts.

Q. Well, that does not change the picture from this morning, that each continuing purchase from Mr. Arp has required the payment of additional value per acre, is that correct? A. That's right.

Q. Now, you have been in Court all the time, have you not, Mr. Dellinger? A. Yes, sir, I have.

Q. You haven't changed your opinion of the valuation given this morning at this time, have you?

Mr. Raper: I think that's an improper question, Your Honor.

The Court: There has been no indication to the contrary.

Mr. Hickey: I will withdraw the question.

The Court: All right.

Q. You testified on direct examination to Mr. Raper with regard to your cost of improvement, is that correct?

A. That's right, sir.

Q. Were you present in Court when Mr. Bowes was on the stand? A. Yes, sir, I was.

Q. Isn't it a fact that Mr. Bowes attached -- gave you a greater amount that you actually paid for improvements in his comparison? A. I imagine so. I don't remember exactly what his final figures on those projects --

Q. Well, if he testified to an allowance --

204] Mr. Raper: I think, Your Honor, that this line of questioning is improper.

The Court: That's argumentative, Mr. Hickey.

Mr. Hickey: That's all. Thank you.

Redirect Examination by Mr. Raper:

Q. Just so we are clear here, Mr. Dellinger, you bought

eight blocks under agreement, Defendants' Exhibit No. F. That's right, is it? A. That's right.

Q. And did you pay the amount stipulated in that agreement for each one of those blocks? A. That's right.

Q. $10,000? A. $10,000 a block for a total of $80,000.

Q. All right, sir. Now on the supplemental agreement, Defendants' Exhibit No. G, did you pay to Mr. Arp for the land deeded to you the amount provided for by that contract?

A. Half of 14 and all of 13 was $18,000. Half of Block 12 was $5,000, and the final payment was $12,000, I believe, total of $115,000.

Q. All right, sir. Now when you made those payments, did you work out that payment on the basis that you agreed to pay $250.00 per lot? A. That's right.

205] Q. And that's $250.00 for a 25 foot lot? A. 25 foot lot.

Q. All right, sir. A. Other than on that very last lot here where you will have a fraction. These lots are narrower at the back than they are at the front. You will cut off a 25 foot lot and a minor calculation took place in their arriving at that $12,000, but it would be very close to $250.00 a 25 foot lot on that one.

Mr. Raper: I believe that's all, Your Honor.

The Court: Anything further from this witness?

Mr. Hickey: No, Your Honor, thank you.

JOHN F. YEAGER, called as a witness on behalf of the Government, testified:

Direct Examination by Mr. Raper:

Q. Will you state your name to the Court and Jury?

A. John F. Yeager.

Q. Where do you live, Mr. Yeager? A. Cheyenne.

206] Q. Wyoming? A. Wyoming.

Q. And what is your occupation? A. I am chief of the appraisal section, Veterans Administration.

Q. In Cheyenne, Wyoming? A. In Cheyenne, Wyoming.

Q. As chief of the appraisal section of the Veterans Administration, what are your duties? A. My duties are to

review all appraisals made in the State of Wyoming where a veteran purchaser is interested and to issue a certificate of reasonable value.

Q. All right now, would you broaden that out. Those are your duties generally speaking, but explain it a little more fully so that those of us who don't know the details of the Veterans Administration would understand it.

A. I don't quite understand just exactly what you want, Mr. Raper.

Q. You work for the Veterans Administration--

Mr. Hickey: If it will save time, I know Mr. Yeager --

Mr. Raper: Yes, but the Jury doesn't.

Mr. Hickey: I will admit his qualifications.

Mr. Raper: I'm not getting at his qualifications, I'm getting at his duties.

A. Oh. Now I understand. Excuse me.

Q. All right. A. Our first duty is to identify the
207] property. Our second duty is an analysis of the location. The next duty is a rating of the location. Am I going --

Q. Go ahead, you're doing fine. A. An analysis of the property site and also analysis of the improvement placed thereon, an analysis of the buyer's market and an analysis of the seller's market, and rating of the property, the market value of the property and our valuation in final.

Q. All right, now what do you do all that appraisal work for over there in your section? A. To establish a fair price so the veteran can pay for any property.

Q. You make an appraisal then of land for procurement of a VA insured loan, is that what you are talking about now? A. Yes.

Q. All right, sir, now how long have you been engaged in making appraisals for the Veterans Administration?

A. Eleven years.

Q. And during that time have you been engaged in making appraisals entirely? A. No, sir. Five for -- approximately five years entirley. Six years on a fee basis.

Q. Was that before you went to work at --

A. That was before I became chief of the appraisal

section.

Q. All right. Now you are on a full time basis?
208] A. I am on full time.

Q. All right, sir. Now what type of appraisal do you make? On what kinds of property? A. We make appraisals on homes, farms and business realty.

Q. All right, now when you make an appraisal on property, what sort of a value are you looking for?

A. We are looking for the fair market value, or the reasonable value by which a well informed purchaser or a well informed seller might place his property on the market for sale to a veteran purchaser.

Q. All right, sir, now is there any difference between reasonable value and market value, as you fix it?

A. There can be --

Mr. Hickey: I object to this line of examination. I don't know that it's proper that this witness can be put on to explain the difference, which I think is probably the duty of the Court at the time of charging.

The Court: That's true, but I think it may be proper to find out what standards he uses. Maybe he uses an accurate standard. The Court will determine that. Maybe he won't. Proceed.

A. Will you ask the question again, Mr. Raper?

Q. Is there any difference between the reasonable value that you look for in your appraisals and market value that you also look for in your appraisals?

A. There could be, but it would be very rare. We try
209] to place the purchaser in a competitive position by virtue of Veterans Administration guarantee so that he may purchase a property in competition with -- I don't want to say civilian, that isn't the word but other purchasers, other than veterans.

Q. In other words, your standard of market value for the veteran is the same as anybody else's?

A. That's right.

Q. And you set yourself up as an agency there to help him, is that right? A. To help him --

Mr. Hickey: I object to leading the witness. I've stood about all I can.

The Court: It is leading.

Mr. Raper: Yes, sir, I understand that ruling.

The Court: I'm sure you understand that, but I want to know is if you will discontinue it.

Mr. Raper: Yes, sir.

The Court: All right.

* * * * *

210] Q. You are the same John F. Yeager who was testifying just before the recess? A. I am.

Q. Now, Mr. Yeager, in the performance of your duties as a chief of the appraisal section, have you ever had occasion to appraise lots or supervise the appraisal of lots in the vicinity of an area in Cheyenne known as Van Tassell Terrace? A. I have.

Q. What lots over in that area were you called upon to appraise? A. Lots known as Interior Heights addition.

Q. Could you go to the maps behind you and point out the location of the lots that you were called upon to appraise? A. We were called upon to appraise these lots here (indicating).

Q. By number, please. A. By number? 28, 29 in one request for determination of reasonable value; 30 and 31 in another request for determination of reasonable value; 37 and -- 34 and 35 in another parcel; 36 and 37 in another parcel.

Q. Are those lots or blocks? A. Those are blocks. The last parcel that we were called upon to make a determination of reasonable value on were portions of Block 11 and Block 12 in Interior Heights.

Q. All right, sir, now you can come back to the witness stand. All right, sir, now when you are called upon in the performance of your duties to make an appraisal of property, what do you do? A. The first step is to identify the property and then to visit the site.

211] Q. Now what is the purpose of that? A. We visit the site for the purpose of determining the topography of the ground, the suit bility for the improvements that are placed -- supposed to be placed on the land, also for the

purpose of determining any adjacent influences that might be directly conjunctive to the subject property.

Q. All right, sir, now what influences do you refer to there? A. Any influences that may increase the value of the property by virtue of its location, also detrimental influences that may influence their valuation of the subject property.

Q. All right, sir, now what do you do after that?

A. We then use this property and make a comparision with any other appraisals that we have made in the past to arrive at a determination of how well the subject property will compare to other properties previously appraised on which we have an established market value.

Q. All right, sir, now what else did you do during the course of that appraisal? A. We make our recommendations as to lot improvements such as street surfaces, curb and gutter, sidewalks, water, sewer, check all that to see that they are an acceptable lot and all the utilities that will be present.

Q. All right, sir, now what further, if any further steps do you take? A. Then we determine the replacement costs of the improvements to be placed thereon.

212] Q. Does that have anything to do with the value of land? A. Not -- in one respect it does.

Q. And what is that respect? A. Valuation of land as far as the Veterans Administration is concerned. It is determined by the quality and price range of the improvement to be placed on the land.

Q. All right, sir, now you stated that you had occasion to appraise certain lots in Interior Heights, certain blocks -- lots and blocks in Interior Heights. Did you follow that procedure in making that appraisal?

A. Yes, we did.

Q. All right, sir, now would you state just what you did with respect to the appraisal that you made over there, having specific reference to that particular appraisal or appraisals?

The Court: Well, he said he followed the practice. I suppose you refer to something in addition.

Mr. Raper. Well, anything that he did in his appraisal that were peculiar to that property.

The Court: Very well.

A. This project was known to us as an economy housing project and our valuation of the land bore directly on the fact that economy housing would be placed on these lots.

Q. All right, now what do you mean by economy housing?

213] A. Housing that is suitable for persons in a low income group.

Q. All right, sir, now what are the minimum standards of the Veterans Administration of such improvements?

A. Well --

Q. Just generally speaking. A. Well, generally that the house should provide comfortable living, with adequate heat, light and ventilation, comfortable living in the respect that comfortable living can be attained in an economy small house.

Q. That then could be referred to as a low cost project over there? A. Yes, sir.

Q. That would be classified in that manner?

A. Yes, sir.

Q. And that's what you mean by economy. All right, sir, now what sort of an appraisal did you place on the lots in Blocks 28 to 31 and Blocks 34 to 37?

A. If I can refer to my --

Mr. Hickey: We object, Your Honor, on the grounds that his appraisal of these lands are not the lands we are interested in, and it's not the best evidence. The best evidence is already in with regard to the actual cost of this property, but I don't believe his appraisal is material, what he appraises adjacent property to be.

The Court: I am just wondering if we are not getting into a bottomless hole there, if we begin to receive appraisals on other individual lots. There would be no end to that. I am wondering if we can't, in view of his knowledge of all of these other factors that you have shown or may show, ask him if he has a judgment as to the fair market value of the property in dispute, or would that fit in with your plan of procedure?

214] Mr. Raper: Well, Your Honor, he has appraised this property. He has placed, as he testified, a market value on it, and that's all these other expert appraisers

of the defendants have done, and I think that he has qualified himself as an expert, and also he is in a different role. He has made an appraisal absolutely independent of this case, and I think that it's valuable.

The Court: Well, we're getting into a little different field. We all concede that a mere offer to buy, I suppose, wouldn't be admissible as to other land. Now I don't think we have received any evidence of this nature.

Mr. Raper: Well, we have received opinions as to value of the land.

The Court: With reference to specific sales.

Mr. Raper: Well, these have reference to specific sales.

Mr. Hickey: But I think the witness is testifying --

The Court: Well, I'm going to sustain the objection.

Mr. Hickey: And move that it be stricken, the portion he has testified to.

The Court: Well, no, it need not be stricken because it showed the qualification to pass upon matters perhaps in issue.

Q. Well now, Mr. Yeager, have you a definite opinion
215] as to the value of lots in the Interior Heights in those blocks which I have just mentioned to you?
A. Yes.
Q. And what is your opinion as to the value of those lots?

Mr. Hickey: Objected to, Your Honor, on the grounds that proper foundation has not be laid. The witness, I believe, testified that he did not base his appraisals on sales, but he based it on other matters. I think that's improper.

The Court: The objection is sustained.

Q. All right, Mr. Yeager, when you make an appraisal of

property, do you consider other sales of land in the vicinity or the area? A. That is our main criteria we use, comparable properties, to determine market value of other lots.

Q. All right, sir. Now in this specific instance did you use any comparable sales in any other areas of Cheyenne? A. Yes.

Q. And what areas were those? A. Leisher-Black area was one of them.

Q. And any others? A. I don't believe there was any area comparable at that time, Mr. Raper.

Q. But you did make a comparision with the sales of lots in the Leisher-Black? A. In the Leisher-Black area.

Q. All right, sir, now in your appraisal of the lots
216] in the Interior Heights area and having in mind the comparison that you made with lots in the Leisher-Black area, have you formed an opinion as to the value of the lots in the Interior Heights addition?

A. Yes.

Mr. Hickey: Objected to, Your Honor --

The Court: Well, I see no objection to the statement he formed an opinion, and the answer may stand. Continue.

Q. All right, sir. Now what is your opinion as to the market value of lots in Interior Heights Blocks 28 through 31 and Blocks 37 through-- Blocks 34 through 37.

Mr. Hickey: Just a moment. That's objected to, Your Honor, on the grounds that he is asking him to give his opinion of an appraised value of continuous lots to the subject. If he were asking for the appraised -- his appraisal of the subject lands, there would be no objection, but we object to it on the grounds that it's not the best evidence, that there are actual sales in the area that he is asking for that are the best determining factor.

The Court: I think I must sustain the objection.

Q. All right, sir. Now let me ask this question, Mr. Yeager After you make an appraisal on land, is that land sold for the amount for which you appraise it? A. Yes.

Q. And how does that come about? Would you explain that? A. Comes about on a lot basis on our total certificates of reasonable value -- our total determination of reasonable value that's issued on our certificate.

217] Q. And that lot can't be sold to a veteran for any amount in excess of that, is that it? A. The total price can't be in excess of that valuation.

Q. All right, sir. Now I would like to ask you whether or not you have formed an opinion as to the value of lots in these blocks which I have heretofore referred to just previously as to their true market value. A. I have.

Q. And what is that?

Mr. Hickey: I object to it. Just a moment, I object to it on the same grounds, that the sales themselves are in evidence. He put them in, and we put in evidence of those sales. They are in the record, they are the best evidence and not the testimony --

The Court: Mr. Raper, are you trying to get in the back door what I have told you you can't get in through the front door? Now I have ruled on that and you have your record on that. The objection is sustained.

Mr. Raper: Well now, Your Honor, I realize it's been sustained. If you would permit me to say a word or two here.

The Court: Well, proceed.

Mr. Raper: I'm not trying to impose this witness on the Court wrongfully. But this man has qualified himself --

218] The Court: I've ruled, Mr. Raper. Proceed with your examination.

Q. All right, now Mr. Yeager, are you acquainted with the area in the vicinity of the Van Tassell Terrace grounds which we are involved in in this lawsuit? A. Yes.

Q. Would you describe that area to the Court and Jury?

A. I am acquainted with the area adjacent to the Van Tassell Terrace grounds by virtue of appraisals that we have made in Interior Heights and in the Leisher-Black addition.

Q. All right, sir, now would you describe the area to the Court and Jury, please? A. I don't --

Q. Well, what's over there? As far as land valuations are concerned. Anything over there? A. There is a blighted area adjacent to Van Tassell, a detrimental influence, that we consider in our valuation of land due to its proximity to the Union Pacific Railroad tracks, detrimental influence due to warehouse and factory grounds adjacent to the subdivision. It's near the city dump, another detrimental influence. And Interior Heights itself is grazing land, rolling, grazing land, very adaptable to --

Q. Now that area, is that an area that has developed recently or a long time ago? A. That has been there all the time.

219] The Court: Are you talking about the Van Tassell housing area in particular or the entire area there, including the Van Tassell Area, or the area exclusive of it?

Witness: Well, Your Honor, he asked me if I was acquainted with the area adjacent to Van Tassell, isn't that right?

Mr. Raper: And Van Tassell.

The Court: That's what I wanted to clarify.

Witness: I am acquainted with Van Tassell Terrace.

The Court: And that's what you were referring to?

Witness: That's right.

The Court: Including Van Tassell?

Witness: Yes, sir.

The Court: All right.

Q. All right, sir, now what effect does a low cost housing project have upon land values?

Mr. Hickey: We object on the ground that it is calling for a conclusion that I don't know he has qualified himself to answer.

The Court: Overruled.

A. A low cost housing area, as far as our manual procedure goes, has no influence upward on any land value that is adjacent to a low cost or economy housing project, unless we can construct buffer strips of increasing value improvements between the economy group houses and any subdivision that it may be used for in the future. We have stabilized the land values due to the fact that it's an economy project.

Q. All right, sir, now in the performance of your
220] duties, have you been required to compile any information as to the cost of land development?

A. Yes, I have.

Q. And are you acquainted with the cost of land development as of August 25, 1955? A. Yes.

Q. And what at that time were the prevailing costs of land development in the community of Cheyenne?

A. From information --

Mr. Hickey: Objected to, Your Honor, on the grounds it's too general. If he can tie it down to Interior Heights, we will not have an objection.

The Court: Very well.

Q. All right, sir, what is the cost of average development of any subdivisions in the vicinity of Van Tassell? We will tie it down that far.

A. The information from my files are of cost analysis section, which I supervise, at the date of August 25 or in that quarter period, where we compile our cost indexes, the current price for curb and gutter at that time was approximately $1.40 a lineal foot; street sidewalks were approximately 40¢ a square foot; paving -- which this figure includes the gravel base, and this is a road mix paving job -- at $2.50 a square yard; sewer, gas and water for a 50 foot lot would average $200.00.

Q. All right, sir, then what is the average cost, the
221] general prevailing average cost as of August 25, 1955, for lot development? A. Our figures that we used, and these are a check that we use on comparable values $590.00 for improvements to the 50 by 120 foot lot in Interior Heights addition.

Q. All right, sir. Now you state that you have placed valuation on Interior Heights, certain blocks that I have asked you about. I don't want you to tell me what value you have placed on them, because the Court says you can't, but do you remember about when you made that appraisal, or those appraisals? A. We made four appraisals -- may I state these dates?

The Court: Certainly.

A. On July 16, 1954; on August 25, 1954; on September 27, 1954; and on March 29, 1955. These certificates are issued for a period of eight months.

Q. All right, sir, now have you made any appraisal of lands in the Interior Heights addition described as Blocks 11, 12, 13 and 14? A. Yes.

Q. And when did you make an appraisal on those lands?

A. On May the 8th, 1956, we made an appraisal on a portion of Block 11 and Block 12 in Interior Heights addition.

Q. All right, sir, now was your valuation in that area any different than your valuation placed on the first appraisals that you made in the four blocks -- eight blocks just south of that? A. No.

222] Mr. Hickey: We object to it and ask that it be stricken on the grounds it's immaterial.

The Court: I'm going to let it stand. Mr. Raper, the issue here is what was the reasonable market value of the land, not in the development in general, but in the Van Tassell development. I am sure you realize that.

Mr. Raper: Yes, I do. Now, Your Honor, I think this is very important, because they have said that when that first stuff was put in there, it increased the value of everything that was put in there afterwards. This witness said it didn't increase it.

The Court: I am permitting it to stand, but I think we should keep the issue in mind, except for that element of rebuttal.

Mr. Raper: Yes, sir, I understand that, sir. Your Honor, I would like to renew my point with the Court that

this witness is an expert in land values, that he has appraised land adjacent to Van Tassell Terrace and immediately adjacent to and in other areas, and that he is here laying ground work for other expert witnesses to arrive at land values within Van Tassell itself, and I think that it is ground work and I think that his views as to valuation in the adjacent areas are something that will be of value to the Court and to the Jury in evaluating these lands. He of course has not had occasion in the performance of his duties to evaluate Van Tassell Terrace itself, because it's a Government operated project and he would have no occasion to.

223] The Court: Well, Mr. Raper, my point is, and the basis of my ruling is that if evidence as to an appraisal of a particular lot outside of the subject property is admissible, then other appraisals would be admissible, not only on that lot but on all other lots similarly situated. So we come to a result where we are trying appraisals on every single lot in the whole general area and having experts express their opinion as to those independent appraisals, without reference, as far as the expert is concerned to the subject property. I think it's entirely proper for you to ask whether he has a judgment based upon his observation, laying whatever foundation you want as to the reasonable market value of the property, of the subject property, and there may be various other matters going to rebuttal which would be proper, but I have already ruled on the proposition that evidence as to an independent appraisal of a particular lot outside of the subject area, without reference to any transaction or buying or selling would be inadmissible, since there is absolutely no way to forego the interminable expert testimony on individual lots, as far as appraisals are concerned.

Mr. Raper: Each one of these is a sale, Your Honor.

The Court: Then go to the sale and find out what the sale was from his knowledge, rather than the appraisal, if he is testifying to a sale.

Mr. Raper: All right, sir.

Q. Now, Mr. Yeager, referring to your records, do you

know of any sale in Interior Heights that have been made of properties there? A. Yes, sir.

Q. And how many sales have been made over there to
224] your knowledge? A. I don't want to count all these but I would say we have 90% of 102 or -- or 192 houses, we have made the -- guaranteed the loans on, so I have a record of those sales.

Q. You have a record of those sales. Now do you know the amount at which the land was valued?

A. Yes, sir.

Q. In each one of those sales? A. Yes, sir.

Q. All right, now what valuation was placed upon the land in each one of those sales in Blocks 28 through 31 and 37 through 34?

Mr. Hickey: Just a moment.

A. $850 --

Mr. Hickey: Just a moment. We object to that again on the same basis. He is now asking him for what valuation he placed upon the lands for this sale. The sales themselves are the best evidence by the warranty deeds which, I believe, are in evidence, Your Honor. They do not show a sale -- a value broken down which would in any way alter the situation as shown on the deed itself and we object to this line of examination.

The Court: I think there's a question here, a new facet of it, that perhaps we should hear part of it. I take it that you are -- you will conclude the testimony in time to submit the matter to the Jury tomorrow night. How many more witness do you have?

Mr. Raper: I am satisfied that we can get through.
225] Not counting rebuttal that defendants wish to engage in, I think we can be through probably by noon tomorrow.

The Court: I would like to hear you on this objection. I assume that you propose to go into detail with regard to sales to veterans of house and lot combined.

Mr. Raper: That's right. And the sale price and what

part of it is lot value and what part of it is house value.

The Court: And with reference to the judgment of the witness as to allocation to be made.

Mr. Raper: That would be allocation.

The Court: Let's hear argument on that. I don't think it would be worth while to hold the Jury around further tonight. I am going to excuse you, ladies and gentlemen, until 9:30 tomorrow morning and we will work out some of our legal problems involved in your absence. Remember the admonition of the Court I have heretofore given you. You may now withdraw.

Mr. Raper: I think probably the witness can be --

The Court: Well, I may want to ask him a few questions to pin point the offer of proof. You may step down. If you are needed later on --

Now on your objection, Mr. Hickey, I'll hear you.

Mr. Hickey: We object, Your Honor, to the testimony of
226] the witness. I presume the Jurors have all gone from the Courtroom. Would the marshall -- I wonder if there are any of them in the hall?

The Court: The marshall may check.

Mr. Hickey: We object to the testimony offered, Your Honor, on the grounds that it is the expert testimony of this expert witness as to his opinion as to the allocation of the total cost to land values. As I understand it, what Mr. Raper proposes to do is -- and I will attempt to use figures -- is take an entire unit on which the VA loans $9500.00 for the purchase of a home erected on a lot and the going price of that is $9500.00, and then to allocate that $9500.00, a portion to what this gentleman has allocated it as lot value and the other portion as to what he has allocated to improvements value. Now we say that that's improper for several reasons.

Number One, it's not the best evidence because the best

evidence of the value of those particular lots that he has spoken of that are admissible in an action of this kind is already in evidence. There is a sale of this property that can be broken down to lot value and has been broken down to lot value -- three sales which occurred within a two year period. They are the sales from Arp to Dellinger. Now there are no sales; other than the few sales in Leisher-Black that Mr. Black testified to which are sales of lands without improvements. We do not believe that he can take a sale of land with improvement on it and permit this gentleman to allocate that. It's not fair because his allocation of the land in no way has consideration of what a willing buyer will pay a willing seller, it is what a loaning agency -- the portion a loaning agency allocates to land of the money it loans for a completed project.

227] The Court: I think I have your position. Now do you have any authority?

Mr. Gray: May I add just a point there, Your Honor? As I see it, what Mr. Raper is endeavoring to do here is to get into evidence the opinion of Mr. Yeager so that this expert then that is going to give his opinion can render his opinion upon the opinion of Mr. Yeager.

The Court: Well, in my opinion that would be a rather infirm foundation, if it's based upon another person's appraisal without reference to any sale or valuation.

Mr. Gray: That's what I understand the purpose for which Mr. Raper offers this witness. He is not offering this witness to testify as an expert upon the value of the subject lands. He is offering him only to obtain his opinion as to the value of the land in the Dellinger tract so that the expert which Mr. Raper wants to offer later can take his opinion and put it on top of the opinion of Mr. Yeager, and we object to it for that reason.

The Court: Well, I am going to hear that is Mr. Raper's purpose before I assume it is. I'll hear your authorities before I hear Mr. Raper.

228] Mr. Raper: May it please the Court, the Court will probably recall the testimony of Mr. Bowes. Mr. Bowes, I think, brought up eight, nine, ten, eleven, twelve sales, something like that, of individual lots in which he separated the value of the improvements and the value of the lot. Mr. Yeager in his capacity as an appraiser for the Veterans Administration makes that same breakdown for all sales of VA guaranteed loans. That is, all property that is sold must be appraised, and the appraisal is divided into two parts, one the value of the land, two the value of the property. Now that is without regard to the amount of the lot. As he has said here, he has appraised these properties at market value. His purpose of that appraisal is to divide the difference between the land and between the improvements. Now that's just exactly what Mr. Bowes has done here. He has come up with some sort of a sales price which is a package deal, a house and a piece of land, and he has segregated the two, and he has put the value of the land so much and the value of the improvement so much.

The Court: Of course the difference is, Mr. Raper, that he did that without the issue being raised and without objection. The issue is raised now, and there has got to be determination of what the law is with regard to that.

Mr. Raper: But that is the position. Here is a man that deals with real values every day. He is aware and knows of some 180 to 190 sales within this Interior Heights and he knows the value at which the land was sold, because he fixed it himself, and all sales are then reported to him in the course of his business.

229] The Court: I did intend to hear the authorities from the other side before we get into your discussion, but since you are on your feet now, another problem that bothers me, the criterion of values that we are concerned with is the fair market value, which as I understand it, is the price which the buyer ready, able and willing to buy but under no compulsion, would be willing to pay to a seller able, ready and willing to sell but under no compulsion to sell. Now if that be the standard, if we permit a representative of Veterans Administration to testify not as to the valuation of the subject land, or not as to his investigation going to the question of his determination as to

the valuation of the subject land as a matter of fact, but to the valuation of individual tracts of a much larger area, that I take it, if that were done over objection, we could also hear appraisals on every single lot in that entire tract, which I would believe numbered several hundred and might take on individual treatment a week or ten days to go into fully without reference to the value of the matter or the area in dispute. If you can do it with this witness you can do it with your other three witnesses and they can do it with any number of witnesses and take every single lot which has been the subject of an appraisal or they can send out appraisers and make independent appraisals at this time, if they can do that before the case is concluded, to satisfy order of proof and requirements of the Court. Now I am looking at it merely from the standpoint of an appraisal. Does it change the situation that there are sales which he seeks to tie this appraisal to, to simply use the appraisal as a breakdown between improvement valuation and real estate valuation? So we come to the question of these sales. The sales don't appear on the basis of the evidence given and on the basis of my knowledge, which I think I can take judicial knowledge of the requirements
230] of the Veterans Administration, with the standards with which we are concerned. Those sales cannot occur unless they are consistent with the appraisal. Now is such a sale as that between a buyer ready, able and willing to buy at the fair market value? Not unless we assume that the fair market value is what the Veterans Administration appraises it. If we assume that, we are just going around in a vicious circle again and saying that we can introduce evidence as a binding matter on the original appraisal of these collateral parcels of land. Now it seems so clear to me as to be almost beyond dispute that that would be wrong. I think if you reflect a moment, perhaps you will concede so, because we are dealing with the wrong standard as to sales, and if we cut the sales off, we are dealing with a proposition where it would take us three or four weeks to try this case. Now I will hear authorities and then I will permit you to reply.

Mr. Hickey: Thank you, Your Honor. Your Honor, I am going to read to the Court from Volume No. 5 of Nichols on Eminent Domain. I am not as prepared as perhaps I should be on this question because it has come up quickly, but

this is the approach I take, Your Honor. I understand from the qualification of the witness that he values for purposes other than this Eminent Domain proceeding. I understand that the purposes of the valuation of Mr. John Yeager as an agent of the Federal Government is for the purpose of evaluating the property for the purposes of the Government guaranteed loan or mortgage.

231] The Court: Yes.

Mr. Hickey: Now, Your Honor, I think on this chapter, which under the heading of "Valuation For Other Purposes," the chapter starts out this way: "It is almost everywhere the law that the value placed upon a parcel of land for the purpose of taxation by assessors of a town in which it is situated is no evidence of its value for other than tax purpose." Now there is the Federal case of --

The Court: Well, I have no question about that. That's hardly in point.

Mr. Hickey: Starting from that point I go to this section 22.2, "The admissibility of other Federal official valuations as evidence of value in the trial of an eminent domain proceeding is a question of very infrequent occurrence and has received scant attention from the Court." Now there is nothing in here about a GI VA appraisal, but it does hold that the official evaluation of property for the purpose of inheritance tax is not admissible; that prior judicial valuation for purposes other than the purpose at hand is not admissible; for rate making is not admissible; and I find that on the basic premise, Your Honor, of it being another official valuation which is separate and apart, that it is not admissible.

232] Now we probably can spend some time tonight with the books and get some cases on it, but I believe Nichols sustains our proposition.

The Court: Now it's true, Mr. Hickey that you have introduced testimony from your last expert involving a breakdown.

Mr. Hickey: Yes, Your Honor.

The Court: And it's also true that he based his opinion on his ideas as to that, or at least tested his opinion. It's also true that that came in without objection. But if Mr. Raper's proper testimony was in exactly the same category, I wouldn't let that matter of waiver of objection, if any, bother me because I'd strike your testimony. You were relying on the value converted. But your witness gave his judgment as to the market value based upon all of these investigations and tests that he did. Now I take it this leads into the matter that affects Mr. Raper, and you might give me your reaction to this other side of the problem. I take it that your witness, Mr. Raper, doesn't propose to give his opinion as to the value of the subject property.

Mr. Raper: Well, he has a very definite opinion as to the value of the subject property, Your Honor, and we had not planned to have him express himself on that. However, he could and we may consider over the night having him place his value on the property or let it stand with what testimony we have here. We are concerned that we don't get any reversible error. We don't want any of those elements in there.

233] The Court: We are all looking with an eagle eye, I am sure.

Mr. Raper: I don't want to have to do this over.

The Court: Let's proceed then on the assumption that he doesn't testify as to the valuation of the subject property. His testimony then with reference to the individual tracts outside would be before the Jury without beirg a foundation or any possible foundation for his ultimate conclusion on the relevant fact. Now let'a sssume he does not express an opinion as to the valuation of the subject property but considers these sales to veterans as a free and open sale for the purpose of the record, and I come along and tell them just that that's not -- that as I think probably what I would have to do -- at least they would have to take into consideration the fact it isn't a sale with a buyer able to buy whatever the reasonable cost was, it's only a sale to a buyer able to buy if he is willing to buy or will buy at the cost which the Veterans Administration

says is reasonable. So we come right back to a collateral matter. Now I'm very greatly afraid of error to get into that. On the one hand I'm afraid of an interminable bog if we go into each one of these outside lots and get the appraised value without reference to any sales where the matter is broken down. Now I do propose with regard to Mr. Hickey's witness and with regard to consideration to tell them that evidence as to sales of similar lands may be considered, not in and of itself as evidence of value but as going to the question of the valuation of the land in dispute, and they will have to determine through
234] the evidence the comparability, and I will also inform them that expression of value with regard to other land wasn't received with any idea of fixing that value, and that the only issue they have to determine is what was the value of the property in dispute. Do you have in mind any authorities that might indicate (a) that the mere appraised value of other land, without reference to anything else would be in any better position than a mere offer to sell or an offer to buy, which you argued yesterday, and certainly -- and convince the Court, in line with my pre-conceived notion was inadmissible.

Mr. Raper: I'd say that there is a difference here. I'm not going to press this point very much longer at this time, Your Honor.

The Court: I don't want to cut you off on any evidence that you have a right to present.

Mr. Raper: Yes, I realize that if these appraisals did not culminate in an actual sale, I would say we were out the window.

The Court: All right then, let's pass to the other proposition.

Mr. Raper: But now here is an actual sale and here is a man who defines the value of the entire property, the value to the land and the value to the improvements on the land.

The Court: But if the appraisal can't stand on its own legs and the veteran buyer can't accept any other valuation

than the appraisal in making the sale, then it ties right back to this infirm appraisal, doesn't it, because it's not a sale between a buyer able to buy whatever the reasonable value is, it's only a sale to a buyer able to pay what the appraisal is worth.

235] Mr. Raper: I think that is true of all sales, Your Honor. Every sale of a home has to be financed and the man who finances the home or insures the loan is going to look over this property and say, "Mister, are you getting value?"

The Court: Well, if that appeared from the evidence, if it appeared it were a forced sale or something, that would be different, but all the sales we have as far as the evidence shows are between buyers and sellers in the open market. Now we have affirmative evidence from the last witness himself, and I think we can take judicial notice of the regulations that unless the sale is consummated on the basis of the appraisal, the Government won't finance it, so there is a negative established there. That's the biggest problem.

Mr. Raper: Financing fixes market values, Your Honor. And during the time when there were price controls and condemnation of ports and ships and plants and one thing and another, your control prices were considered market price.

The Court: That's entirely different, because the price controlled not withstanding who the purchaser was. Here we have a particular class on which the control operates, but the great general class -- which I will have to instruct the Jury that the Jury will have to consider, disregarding these special veterans' classifications as far as financing is concerned -- comes in a separate category. True, suppose that for instance the different -- well, it's not a simple matter and let's reflect on it overnight. You renew your offer in the morning if you feel so advised.

236] Mr. Raper: Can I ask one question of counsel? How did you separate your land values? Perhaps I should have asked the witness, but just now as a matter of conversation and just between us, how did Mr. Bowes get this separation? Where did you get your land and where did you

get your improvement values?

Mr. Gray: I would be glad to answer that.

Mr. Hickey: Would you do that?

Mr. Raper: Yes, just for our information. The Jury isn't here.

Mr. Gray: Just for your information, as far as improvements are concerned, site improvements and building improvements, they were actual cost figures taken from the books of the builder.

Mr. Raper: And then what was left was land?

Mr. Gray: That's right, after profit.

Mr. Hickey: He allocated some profit.

Mr. Gray: Builders agree that 7% is satisfactory on improvements and 15% they like to get on land, because there's an additional element of risk. Those two factors were applied, both land and improvement had a profit item.

237] Mr. Raper: I think they testified to that. I recall now.

The Court: Of course we come down to the question of actual sales with regard to his testimony, presumably as far as the record shows, on the open market. I don't know whether this will be of any help or not. I have thought that perhaps the technique here, it might be more effective than the ordinary condemnation case. I had some doubt about some of this testimony as going through all of the details, first of comparable sales, and I have known many cases where we first go into the question of general experience with the expert witness, his qualification in general and then his observation and opportunity for knowledge, without reference to details, but showing broadly the knowledge, then coming to the question of evaluation. I realize counsel has a right to determine the most effective way to approach that matter. I would have some question about the testimony of defendants' last expert if the question had been raised.

I'm going to reflect upon that just a little more, too. We will consider your problem, Mr. Raper, in the morning.

Mr. Raper: All right, sir.

The Court: We will stand in recess until 9:30 tomorrow morning.

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* * * * *

The Court: Ladies and gentlemen we regret the delay here. I assure you that neither counsel or the Court have been entirely idle. We will resume trial of 2901 Civil, United States of America vs. Arp, et al. I understand that there is a motion to be joined in by both sides with regard to the striking of testimony.

238] Mr. Raper: Yes, sir. I believe that the answer to the last question asked the witness was out before the objection could be entered and I believe that we wish to join in a motion to strike that and that the Jury should be instructed to disregard it.

The Court: The last answer of the witness with reference to an estimate of appraisal of the value of a certain lot, since the prior ruling of the Court has precluded a full explanation of the figure, will be stricken and the Jury is instructed to disregard it. Does that meet your satisfaction?

Mr. Hickey: Yes, sir.

Mr. Raper: Yes, sir, and that the answer was left unexplained.

The Court: Yes, and it is stricken and the Jury instructed to entirely disregard it or enter into no speculation concerning it.

No. 236

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United States Court Of Appeals

TENTH CIRCUIT

VOLUME II

No. 5524

JOHN C. ARP and MILDRED K. ARP,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

Appeal From The United States District Court
For The District Of Wyoming

(FILED NOVEMBER 27, 1956)

Filed November 27, 1956.

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in its naked state as of August 25, 1955.

Witness: My --

The Court: Now, you can answer that yes or no. Do you have any judgment on that?

Witness: Yes.

The Court: You may state what that judgment is.

Mr. Hickey: May I have that objection?

The Court: Yes.

Witness: My estimate of the valuation of Van Tassell Terrace, that parcel containing 30.89 acres is $47,416.00.

Mr. Raper: No other questions.

Cross-Examination by Mr. Hickey:

Q. Mr. Yeager, your principal business and function is to make recommendations for loans, is it not?
A. No, sir.
Q. What does you agency do other than make loans?
A. We guarantee loans, Mr. Hickey.
Q. Then your principal function is to guarantee loans, is it? A. The agency's function is to guarantee loans.
Q. And they rely upon your opinion in guaranteeing those loans? A. On the appraised value.
Q. They rely upon your opinion in the guaranteeing of loans, is that right? A. Mr. Hickey, my opinion is only a part of the process of guaranteeing a loan by the Veterans Administration.
241] Q. But your opinion is one part of the elements which the agency considers in guaranteeing loans? A. Yes, sir.
Q. They have no function of buying and selling property, do they? A. Yes, sir, they do.
Q. What? A. We have the responsibility and can take the responsibility of acquiring properties and reselling them, renting them --
Q. But now isn't that when you have to foreclose -- or you are called upon to take up the guarantee and foreclose

JOHN F. YEAGER, resumed the witness stand and testified as follows:

Direct Examination (Continued) by Mr. Raper:

Q. You are the same John F. Yeager who was testifying yesterday at the end of the day, are you? A. I am.

Q. You are reminded that you are under oath, Mr. Yeager. Have you been called upon to make an appraisal to determine the fair market value of the Van Tassell Acres as of August 25, 1955? A. I have.

Q. Have you made such appraisal? A. I have.

239] Q. Are you prepared at this time to, in your judgment, express an opinion as to the value of the entire 30.89 acres of raw land known as Van Tassell? A. I am.

Q. And what is that opinion?

Mr. Hickey: We object, Your Honor, to the question on the grounds that the proper foundation has not been laid, that the qualifications of the witness cannot qualify him to answer the question and that the answer to the question would be prejudicial.

The Court: Has it been developed that he has inspected the Van Tassell Acres?

Mr. Raper: Yes, sir, I believe so. I can ask that question just to clear it up.

Q. Have you inspected the Van Tassell Acres?

A. I have made a personal physical inspection of the Van Tassell Acres.

Mr. Raper: All right, sir.

The Court: The objection is overruled, the objection going, I think, to the matter of weight and not competency. The witness may answer. If you will permit me, perhaps we should find out first whether you do have a judgment --

240] Witness: I do have.

The Court: As to the reasonable or fair market value of the Van Tassell Acres, without reference to improvements,

the property? A. Foreclosure is another operation of our agency.

Q. Well, that's the only way you acquire property, isn't it? A. We can acquire property by refinancing the property for any purchaser.

Q. But it has all to do with the financing of property, does it not? A. I don't know how to answer that question, Mr. Hickey. Would you ask that in a different manner?

Q. Well, if you don't know how to answer that, don't try to. Do you know how to answer this question? Do you ever go into the open market for the United States Government or any of its agencies and buy land from a willing seller as a willing buyer? A. No, sir.

Q. All right, now have you ever had any experience in
242] appraising land for multiple dwelling purposes?

A. No, sir.

Q. Did you consider the Van Tassell Terrace, Mr. Yeager, on the proposition of its highest and best use of multiple dwellings at the time of this appraisal? A. No, sir.

Mr. Hickey: That's all, thank you, Mr. Yeager.

Mr. Raper: No further questions.

The Court: You may step down.

243] MILTON V. NATION, called as a witness on behalf of the Government, testified:

Direct Examination by Mr. Raper:

Q. Will you state your name to the Court and Jury?

A. Milton V. Nation.

Q. Where do you live, Mr. Nation? A. 305 West 7th Avenue.

Q. And what is your present occupation? A. I'm in the used car and wrecking business.

The Court: I doubt if you are talking loud enougn. Can you talk louder?

Witness: I guess I can. I'm in the used car business south of town, about two miles.

Q. Mr. Nation, have you ever been in the business of subdividing land? A. I have eleven acres here adjoining the city I brought into the city.

Q. And when was that? A. I brought it in in 1952 or '53, I don't remember just when it was, when we got it all in.

Q. Did you cause the subdivision of that land yourself?

A. Yes.

Q. And what was the subdivision called? A. Rose Ella addition.

Q. Would you go to one or the other of the maps to
244] the rear of you and point out the Rose Ella subdivision?

A. Right here (indicating).

Q. All right, sir, return to the witness stand, please.

Mr. Hickey: I wonder if we could have that more definitely identified, either by mark or blocks.

The Court: It could well be.

Q. Would you identify this as to location, with respect to any highways or streets that are there?

A. Well, right on this side --

Q. Now use directions, please. A. Well, east and west there is the Clear View Road.

Q. All right, sir. A. And this big road over here (indicating) is 85 and 87 to the west.

Q. And your subdivision is located at the intersection of that road and highway? A. Well, it doesn't come right to the intersection, it's back there a ways.

Q. That would be the one east of the highway?

A. East of the highway.

(Government's Exhibit No. 8 was marked for identification.)

Q. I hand you here Plaintiff's Exhibit No. 8 and ask you whether or not you recognize that. A. I do. Rose Ella addition.

Q. That's a plat of the Rose Ella addition?
245] A. Addition.

Q. And that shows the size of lots and blocks, does it? A. It does.

Mr. Hickey: We object to the exhibit, Your Honor, on

the grounds that it has been shown that it is remote from the area, the immediate area of this particular sale, it appearing that it is east of the Highway 87 and not within the immediate area of the subject property, as is the Leisher-Black and Atlantis projects heretofore discussed in the case.

The Court: I'm going to receive it pro forma and leave to strike if it develops --

Mr. Raper: The Government at this time offers Plaintiff's Exhibit No. 8.

The Court: Received.

Q. Mr. Nation, when did you acquire the property for that subdivision? A. Why, I got eight acres in '45 and it was '46 or '47 when I got the other three acres and a third.

Q. All right, now since you have subdivided that property, have you sold any of the lots out there yourself?

A. I have one lot left.

Q. All right, would you explain to the Court and Jury what sales of lots you have made from your subdivision there, the date of each sale and the amount that was paid?

246] Mr. Hickey: We object to it on the grounds that there is no proper foundation laid for this testimony.

The Court: I'm wondering if there is sufficient foundation, Mr. Raper. I think I must sustain the objection at this time, at least until the record shows some further basis of comparability in the near location on the map.

Q. Are you acquainted with the Leisher-Black subdivision? A. Oh, I just know where it is, that's all.

Q. How far is that from the -- how far is your place from the Leisher-Black subdivision?

A. Well, I imagine it's around sixteen-hundred -- no, it would be further than that, around two-thousand feet.

Q. That would be less than a half mile? A. To the closest spot and my closest corner.

Q. Can you see the Leisher-Black addition from your subdivision? A. No, you can't. There's a hill there.

Q. That's between them? A. Yes, right there on Highway

85 and 87 there is a hill.

Q. All right, which side of the Union Pacific railroad track is the Rose Ella addition located? A. South.

Q. South of that? A. Yes.

Q. Do you know what the location is of the Interior Heights addition? A. Interior --

247] Q. Are you acquainted with the Dellinger or Atlantis development in Cheyenne? A. I know where it is, is all.

Q. Are you acquainted with Van Tassell? A. Well, I just know where it is, I've never been around there.

Q. You haven't been around there? A. No.

Q. Is it very far from your place? A. Well, I don't know just how far it would be. It's on 85 and 87, comes around through there -- oh, I guess it don't even come near it then.

Q. Would that be about a mile away if you follow the road up past Leisher-Black addition? A. I imagine it would be a mile or maybe a little further.

The Court: Could you develop information as to distance from town by access roads and what connection from the access roads?

Mr. Raper: All right, sir.

Q. How far is that addition from town and which direction would you go? A. Well, you would go on 85 and on that Deming Drive on 30, on the truck route to go around there.

Q. You would go under the underpass, would you?

A. No, it's before you get to the underpass, the Van Tassell is.

Q. Oh, I see, you are talking about giving to Van Tassell, you would go on Deming Drive? A. From my place, yes.

Q. All right, sir, what is the nearest business district to your subdivision? A. Well --

248] Q. Is there a business district in south Cheyenne?

A. Yes. On the 30 --

Q. On Highway 30? A. I mean Highway 85.

Q. And how far is that away? A. Oh, I don't know, it's -- would you count a filling station or --

Q. Well, the business district where you say the stores and -- A. It's just on the other side of the creek there.

Q. Would that be about a half mile -- A. Close to it, I guess.

Q. Quarter mile? Isn't very far away is it.

A. About that far, I guess.

Mr. Raper: I can ask further questions, Your Honor, but I think probably the location of this particular subdivision is a question for argument and something to be considered by the experts or those who finally determine the value. This is only basic information.

The Court: Well, I'll overrule the objection and permit the witness to answer. I believe there is sufficient foundation that has been laid.

249] Mr. Hickey: May we have an exception, Your Honor, and I may want a motion after I cross-examine.

The Court: Certainly.

Q. All right, sir, now Mr. Nation, the question that was asked you was whether or not you had sold lots out of that subdivision. A. Yes.

Q. To whom have you sold lots? A. Well, Lot 1 in Block 1, that's on the side of the hill and I traded that for a truck.

Q. Keep your voice up. A. I traded it for a truck and sold the truck for $250.00, but it is on a side hill and the ground is not usable.

Q. All right, now keep going. What lots have you disposed of? A. Well, I'll have to look at this here.

Q. All right.

Mr. Hickey: I didn't hear his full testimony. Did you give a price?

The Court: Yes, he gave a price, $250.00, did he not?

Mr. Hickey: And did he say --

Witness: That was on a side hill where they couldn't build, it was just on a side hill right on the creek.

Mr. Hickey: We object to it and ask that it be stricken

on the ground it is now qualified to show it is not a building site, cannot be used.

Mr. Raper: We don't deny it.

250] The Court: Well, that should be stricken.

Q. That's all right. What lots have you sold and -- please tell us what those are.

The Court: Building lots.

Mr. Raper: Building lot, yes, sir.

A. All right, I sold -- in Block 5 I sold 5, 6, 7 and 8; and in Block 6, Lot 5. I sold them for $4000.00.

Q. Now how many lots were those? A. Five.

Q. And to whom did you sell them? A. Sam Hoffman.

Q. And when did you sell them? A. Oh, they were the first ones up there, started on. I don't know just what ones they were, but he built the house on the first one up there, the first lots that went out.

Q. When was it you sold it to him?

The Court: What year?

A '53 and '54 and '55.

Q. Those sales then were spread -- A. I told him if he would build a house up there I would sell him the lot for what I had in it, just a little more.

Q. All right, how much did you sell those lots for?

A. I sold them for $800.00.

Q. Each? A. Each.

251] Q. All right, sir, what other lots have you sold?

A. Then I sold in Block 6, Lot 5, I sold it for $1750.00.

Q. All right, sir, when did you sell that lot?

A. Two years ago in February.

Q. That would have been February of 1954? A. 1954, yes. About then.

Q. And could you describe that lot? A. Well, it's a lot facing the town, it's the northwest lot of the addition.

Q. Well, what's the shape of the lot? Are there any

exceptional characteristics of that lot?

A. Well, it's not a square lot, it's kind of a triangle there.

Q. What are the dimensions on that lot?

A. Well, I don't know, I would have to look at the map.

Q. I hand you here Plaintiff's Exhibit No. 8 and ask you to describe it from your plat.

A. Well, it's 98.4 feet on House Avenue and then it runs facing the town -- I can't read --

Q. Well, is it any larger than the other lots?

A. Yes, it's a little larger.

Q. With respect to location, is the location any better or any worse than the rest of the property?

A. Yes, it's the best lot out there.

Q. All right, sir. And to whom did you sell that?

A. Van Winkle.

252] Q. Do you know his full name, of Van Winkle?

A. No, I don't.

Q. All right, sir. What other lots have you sold?

A. I sold in Block 5, 11 and 12 for $2300.00.

Q. All right, sir, when did you make that sale?

A. Last July.

Q. Of 1955? A. Yes.

Q. And how much did you sell those lots for a piece?

A. $1150.00.

Q. $1150.00? A. A piece.

Q. And who bought those? A. Mr. Killebrew of Boise-Payette.

Q. All right, what other sales have you made of lots?

A. Well, Block 2, Lot 1, 2, 3, 4 and 5; and Block 3, Lot 2, 3, 5 and 6; and Block 4, Lot 2 and 3; and Block 5, Lot 1, 2, 3 and 4; in Block 6, Lot 1, 2, 3, 4, 6, 7, 8, 9, 10, 11 and 12, I sold to Boise-Payette for $30,000.

Q. How many lots were those? A. Twenty-six.

Q. Twenty-six lots. All right, sir. Now are all of those lots the same size and character? A. No, they are not.

Q. Are the sizes reflected on your plat? A. It shows on the plat the size of the lot.

Q. And the plat correctly reflects the size of those

253] lots? A. Yes.

Q. All right, sir. Now are all of those lots suitable for building? A. Well, there is -- let's see, in Block 2, 2, 3 and 4 aren't.

Q. Two, three and four are not? A. No, they are not.

Q. All right, sir. Now Mr. Nation, do you recall your cost of developing that subdivision?

A. Yes, I have it down here.

Q. All right, sir. What were your costs of developing the subdivision? A. Well, the water was $3000.00, and I give the gas company $2000 and they was to give me that back after I had a hundred dollars on each house, after I had five houses built.

Mr. Hickey: Objected to and ask that it be stricken if it was to be returned.

Mr. Raper: It's been explained.

The Court: Well, the information is before the Jury. If it was to be returned it can be best discounted. Overruled.

Q. All right, sir, go ahead with your cost, please.

A. The abstracts, I give $1195.00; surveying, $504.00; Reed Company I give them $2500.00.

Q. What was that for? A. Leveling.

254] Q. All right, sir.. A. Cliff Vosler, $329.50.

Q. What was that for? A. Leveling.

Q. All right, go ahead. A. Reed Cement Company, $4669.62.

Q. What was that for? A. Curb and gutter.

Q. All right, sir, what other cost of development did you have there? A. And Wilson Brothers, leveling, $141.21.

Q. What was that for, please? A. Well, they leveled and throwed some gravel in there.

Q. That was additional cost of leveling? A. Yes.

Q. All right, sir, go ahead. A. And when I had it brought in, FHA appraised and attorney fees, they charged me $350.00.

Q. All right, sir, now did you install sewer up there?

A. Sewer, yes.

Q. What was the cost of the sewer? A. $7800.00.

Q. And you had water brought in? A. That was $3000.00. I gave that.

255] Q. Oh, you have given that. I'm sorry. A. Yes.

Q. So that you had costs of leveling, costs of attorneys' fees, costs of bringing in water, cost of sewer, cost of curb and gutter, engineering and abstracting fees?

A. Yes.

Q. Those were your expenses of development?

A. (Nods affirmatively.)

Q. You have to answer so that the reporter can catch you. A. Yes.

Q. Do you have any other costs of development?

A. Not development, no.

Q. All right, sir, now had you made all of those expenditures for development at the time you sold the lot?

A. Yes.

Q. And none of that development, of course, then had to be done by the buyers of the lots? A. No.

Mr. Raper: That's all.

Cross-Examination by Mr. Hickey:

Q. Mr. Nation, you have been by the Van Tassell area, have you not? A. Well, I have just been along there, I have never been around in there.

Q. You know what the terrain looks like, don't you?

A. Yes.

256] Q. Would you say that it was in any way comparable to the terrain on your property? A. Well, from just what I noticed, I wouldn't think they would have to do any leveling. I don't know.

Q. But you had to do considerable leveling?

A. Yes.

Q. Isn't it a fact that your particular addition to the east has a severe drop-off? A. On the east of Rose Ella?

Q. Yes. A. Yes, on the east side, goes down three lots, I said we couldn't use, wasn't usable.

Q. Yes, sir, and how deep is that drop-off?

A. Thirty or forty feet.

Q. Would you say that from your observation of the Rose Ella addition and the Van Tassell addition that the land is in any way comparable?

Mr. Raper: Now, Your Honor, I think that's calling for a conclusion of this witness, to call upon him for an opinion. He has given facts pertaining to his own subdivision.

The Court: This is cross-examination, the objection is overruled.

Q. You may answer, Mr. Nation. A. Well, I never been around there any -- I think I drove down through the streets one time, but I didn't think they would have to do any leveling there much. I didn't know.
257] Q. Well, from what observation you have had of it, driving through it once, and knowing your own area, would you say that it's comparable at all?

Mr. Raper: Well, Your Honor, I think he has indicated a lack of knowledge of Van Tassell and has not qualified himself to make a comparison.

The Court: Well, he hasn't directly answered this question. He can either answer one way or the other or that he doesn't know. From what you know would you say the land is comparable or do you know?

Witness: Well, I really don't know.

Q. Well now, you gave some bulk figures. I noticed that when you gave the lot sale price you gave a lot sale price. When you gave your figures you gave your figures in a bulk, is that not right, for your cost?
A. Yes, sir.
Q. Have you ever broken down the cost per lot?
A. No, I never did.
Q. Then you would leave the Jury in the confused state --

Mr. Raper: Now, just a second, Your Honor, I don't believe that that's proper cross-examination.

The Court: The question hasn't been finished, but as far as it goes, I doubt it. Objection sustained.

Mr. Hickey: Well, the Court objects if I attempt to make the witness break it down?

258] The Court: You can't be passing upon the mind of this Jury. This Jury may not be confused at all and it doesn't lie with you to say at this point one way or another. Reframe the question.

Mr. Hickey: Thank you, Your Honor.

Q. Mr. Nation, how many lots were in your addition when you paid $30,000 for the water? A. I didn't pay $30,000 for the water. I paid $3,000.

Q. How many lots were in your addition when you paid $3,000 for the water? A. Forty lots.

Q. There were forty lots? A. And that side hill, they didn't call it a lot because I couldn't use it.

Q. I merely want you to tell me what you consider the lots to which the $3,000 for allocated. A. Forty. $75.00 a tap for each lot.

Q. Then you did break it down? A. Well, yes, that's broke down.

Q. All right, the abstracts for $1195.00. How many abstracts -- How many lots did you have abstracted?

A. Well, the last time I had thirty.

Q. And was that the $1195.00? A. No, no.

Q. All right, how many lots were abstracted by the payment of $1195.00? A. Well, the last ones he charged me $35.00 a lot for and some of them he charged a little more at first and then when he took the thirty lots all at one time he gave them to me for $35.00 a lot, the abstract.

Q. Well, you say that the $1195.00 figure that you
259] gave Mr. Raper was for thirty abstracts? A. No, no.

Q. For how many abstracts? A. Well, I don't know.

Q. Was it for forty? A. No.

Q. Well, if you don't know, you don't know. Now you said that you had some survey costs, I believe.

A. Well, when I laid off into lots.

Q. And how much were those survey costs? A. $504.00.

Q. $504.00? A. That's for the whole thing.

Q. $504.00. For how many lots was that? A. Forty lots.

Q. Then your other costs, you say the gas company charged you $2000.00, but you are to receive that back?

A. Yes.

Q. So that that actually will be returned to you and is not a chargeable cost? A. No.

Q. All right. Then you have the Reed Construction
260] Company, is that right? A. Yes.

Q. And you paid them $2500.00, is that right?

A. Yes.

Q. And how many lots were concerned with that?

A. All of them.

Q. Would that be forty? A. Forty.
Q. And then you paid $325.00 for something.
A. $329.50.
Q. Uh-hmm. A. To Cliff Vosler.
Q. What was that for? A. That was leveling, pushing dirt around there.
Q. $329.00, did you say, sir? A. $329.50.
Q. And that was for forty lots? A. Yes.
Q. And then I think you gave some other figures --
A. Wilson Brothers.
Q. Wilson Brothers. How much? A. $141.21.
Q. $141.21. And for how many lots? A. All the lots.
261] Q. That's forty? A. Yes.
Q. And what other expenditures? A. Sewer assessment.
Q. And how much was that? A. $7800.00.
Q. And that was for all forty lots? A. All forty lots.
Q. And some other expenditures. A. $350.00 attorney fees, and when the FHA --
Q. $350.00 attorney fees and loan costs, would you call that? A. Well, I don't know, they had to make up some papers and put a restriction on the ground out there on the houses.
Q. And is that for the entire forty lots?
A. Yes, that's on all of them.
Q. And what other costs? A. That's all, I guess.
Q. That's all. You haven't attempted to compute those and assess them against individual lots?
A. No.
Q. Well then, from the testimony you have given, I think you first said your first sale was Lot 1 in Block 1, is that correct? That was the sale of Lots 5, 6, 7 and 8 -- or, no, Lot 1 in Block 1. A. Well, I didn't sale them all-- I sold them all to the same man.
Q. Well, that would be the five lots, 5, 6, 7 and 8
262] in Block 5 -- A. In Block 6.
Q. In Block 6? A. Yes.
Q. Now, you sold them, I believe you said, for $4000.00 a lot? A. $800.00 a piece.
Q. All right, now can you tell me how many lots are there in an acre? A. It would be, I guess, different sized lots.
Q. Well, were these, these five lots, were they the same size or were they different sizes? A. They were all

the same size.

Q. And what size were they, sir? A. I think they were sixty-seven by one hundred-twelve.

Q. Sixty-seven by one hundred-twelve there?

A. It might be a fraction over each, instead of sixty-seven -- might be alittle over one hundred-twelve. They were a little over one hundred-twelve deep, or a fraction.

Q. Well, are they the fairly normal sized lots in other additions? A. Well, they were -- twenty of those lots, all the same size, that was that size.

Q. Well now, I ask you to take this exhibit that Mr. Raper has given you, and tell me if you can, your best judgment of the number of lots that are contained in an acre and having regard to its size. A. Well, I would have no idea.

263] Q. It's been testified in Court that in some instances there are five lots, in others 4.8 or such. Have you ever given that any consideration? A. Never did.

Q. Now, your lots -- your second sale which you say you sold for, I think it was Block 6, Lot 5, for $1750.00, what was the size -- A. That was one lot for $1750.00.

Q. Yes, sir. A. That was this lot here on the corner (indicating).

Q. That was the lot -- A. This lot right here (indicating.)

Q. And that is -- A. Overlooking the town.

Q. And that is a rectangular shape lot, isn't it?

A. Yes.

Q. And I believe it shows one side is 98.49, one side is 26.4, one side is 96.5 and the other is 125.15.

A. Well, you see this here, what it shows this here -- they made a turn for an alley in there.

Q. Yes, sir. A. That's why it's deeper over here (indicating).

Q. Well, did you ever give any consideration as to how much an acre that would be? A. I never did.

Q. Can you estimate whether it's a quarter --

264] A. No, I couldn't.

Q. Now, you sold another sale for -- I think it was two lots, 11 and 12 in Block 5 -- for $1150.00 each.

A. Yes.

Q. And that, I believe, was in the -- were those lots comparable in size to this sixty-seven by one hundred-twelve? A. Well, this one is 56.25 by 96.54.

Mr. Raper: I think, Your Honor, the figures are all on this map and they are just subject to computation.

The Court: I think counsel should have reasonable leeway in going into the matter.

Q. Then some of the lots are smaller than others?
A. Oh, yes.
Q. And the smaller lots are sold for $1150.00 and the larger lots are sold for $1750.00, would that be a fair statement? A. No, I only had one lot like that in Block 4 and Lot 1. That was the lot there --
Q. Well now, Mr. Nation, I think you testified that these sales were made in 1954, or at least some of them were. A. Well, they was -- $800.00 lots. Outside of that one lot.
Q. Well, what would you say as to their valuation since 1954, between 1954 and August 25, 1955? Had they increased in value? A. Well, yes.
Q. And could you say how much, in your opinion, they
265] would increase in value? Twenty percent?
A. I suppose. I don't know, I wouldn't --
Q. Well, you testified that you were in the development business -- A. No, I didn't say I was in the development business. I developed this.
Q. Well, you had one experience? A. This one. This one here, that was enough.
Q. And that's the only experience you have had in the development business, that's the only development experience you have had? A. Yes, that's right.
Q. And tell me this. Do you recognize -- in your limited experience as a developer, do you recognize the factor that the erection of houses or dwelling places in the area increases the value of the remaining lots?
A. Sure, it does.

Mr. Raper: I think that that -- just a moment, please-- I think that's calling for an opinion of this witness that is not pertinent and is getting outside the scope of the direct examination. This man was introduced only for the purpose of --

The Court: I'm going to permit that question as examination going to the reason for difference in price.

I don't think we should carry it beyond that because he wasn't presented as an expert on value.

Mr. Hickey: He has made his answer, I believe.

266] The Court: It may stand.

Q. Did you answer? A. Yes. I said yes, improving the ground around it makes the other more valuable, from what little I know.

Mr. Hickey: That's all, thank you, Mr. Nation.

Mr. Raper: No further questions. Can this witness be permanently excused?

Mr. Hickey: Yes.

The Court: You may be excused.

Witness: Thank you.

(Government's Exhibit No. 9 was marked for identification.)

Mr. Raper: At this time, Your Honor, the Government would like to offer into evidence Plaintiff's Exhibit No. 9, which is a stipulation pertaining to the placing on this land of all of the improvements at the expense of the United States. This has been taken up with counsel.

The Court: I take it there is no objection. The stipulation may be received.

Mr. Hickey: We agree, Your Honor.

Mr. Raper: I would like to read this to the Jury, Your Honor.

The Court: It may be read to the Jury.

Mr. Raper: "It is hereby in open Court stipulated between the parties plaintiff and the defendants John C. Arp and

Mildred K. Arp that all improvements, above and below ground level including buildings, sidewalks, streets, curb and gutter, sewer and water lines, were placed on the property at the expense of and by or for the United States."

267] The Court: Those facts having been stipulated, they may be taken as true by the Jury for the purpose of this case.

JOHN C. ARP, one of the defendants, called as an adverse witness by the Government, testified:

Direct Examination by Mr. Raper:

Q. Are you the same John C. Arp who has heretofore testified in this case? A. Yes, sir.

Q. I believe in your testimony heretofore given you stated that you had purchased this property, that is, the property that is the subject matter of this action, along with other properties from the Children's Hospital of Denver, Colorado, in December of 1952, is that correct?

A. A -- it was -- it was -- October.

Q. October? A. Uh-hmm.

Q. Now, did you enter into an agreement to buy it in October, or did you receive a deed for it in October.

A. I entered into a contract to purchase.

268] Q. That was in October of 1952? A. Yes.

Q. And did you then subsequently get a deed to the property? A. I didn't -- didn't get a deed immediately.

Q. But you did get it? A. But I made the purchase. I had a contract to purchase the property in October of 1952.

Q. All right, sir, but you did then subsequently get a deed in December? A. Afterwards. I don't remember the exact date.

Q. Would that have been a couple of months later?

A. Oh, a month, I imagine. I wasn't here at the time. I was in Panama at the time.

Q. I see. All right then, Mr. Arp, I don't recall whether we asked you how many acres were in that conveyance or not. How many acres were included in that purchase that you made at that time? A. I believe 667 acres.

Q. 667 acres. And what was the total consideration that

you paid for that land?

Mr. Hickey: We object to that, Your Honor. We object to the question on the grounds that the sale is too remote, conditions of the land have changed considerably as shown by the evidence and for the further reason it was not the type of sale contemplated for consideration in an eminent domain case.

The Court: I'm going to permit the answer. The objection is overruled, the question being permitted as a part of the cross-examination. The difference in conditions may be shown by the evidence. It may be entitled to little, if any weight but I will permit the answer.

269] Mr. Raper: Thank you, sir.

A. Please ask the question again.

Q. How much did you pay for these 667 acres that were transferred to you in 1952?

Mr. Hickey: Objection to the reiteration.

The Court: Same ruling.

A. I paid $45,000 for it.

Mr. Raper: No further questions.

Cross-Examination by Mr. Hickey:

Q. Mr. Arp, at the time of the purchase of this property, you were acquainted with the property? A. I was.

Q. Who was the immediate owner prior to the Children's Home? A. Mrs. Maud Van Tassell.

Q. And how did the Children's Home become a devisee, if you know. A. Mrs. Maud Van Tassell willed the property to the Children's Home of Denver.

Q. At the time you purchased it from the Children's Home in Denver, had Mrs. Maud Van Tassell's estate been closed? A. It had not.

Q. Now, Mr. Arp, all of the 600 acres was not in the city, was it? A. No, they were not. Most of the -- greater part of it was out of the City Limits.

270] Mr. Hickey: Yes, sir. We move that the testimony of John Arp be stricken for the further reason that it is apparent in the record that the sale was a sale consummated in the probate of an estate, therefore it is not properly considered.

The Court: Those considerations and all others may be considered by the Jury and I will instruct the Jury further. The motion is denied.

Mr. Hickey: Thank you, that's all.

Mr. Raper: No further questions.

ROBERT J. SMALLEY, called as a witness on behalf of the Government, testified:

Direct Examination by Mr. Raper:

Q. Will you state your name to the Court and Jury?
A. Robert J. Smalley.
Q. Where do you live, Mr. Smalley? A. Cheyenne, Wyoming.
Q. And what is your occupation? A. Real estate
271] broker.
Q. And how long have you been engaged in the real estate business, Mr. Smalley? A. Approximately nineteen years.
Q. And where have you been so engaged? A. In Cheyenne.
Q. How long have you lived in Cheyenne? A. Forty-seven years.
Q. Are you a licensed real estate agent? A. I am a licensed real estate broker.
Q. And how long have you been so licensed? A. I think about twelve years, as a broker.
Q. I wonder if you could explain to the Jury just what your occupation in the real estate business has embraced?
A. Well, in the real estate business over a period of years it's been selling real estate and working up subdivisions, managing business property and resale of other people's property, that is, listing of homes and resale, agents for different companies in business properties and also in subdivisions. In fact, the general real estate

business, I would say.

Q. All right, sir, now has that been your only occupation during all those years? A. Yes.

Q. And you work at that every day? A. Yes.

272] Q. Now, during the time that you have been engaged in that real estate work, have you kept yourself current and abreast of real estate values and real estate markets? A. Yes.

Q. Have you ever bought and/or sold any acreages in the performance of your work? A. One we bought for subdivision purposes.

Q. Were they owned by you or just handled for subdivision purposes? A. I have handled for Smalley Real Estate Company for subdivisions.

Q. Now, I wonder, Mr. Smalley, if you could go to the map which is Plaintiff's Exhibit No. 1 -- here is a pointer, if you need it -- A. All right. If I talk loud enough do you suppose I could lean on this table and point --

Q. Yes, is that close enough? A. I think that would be all right.

Mr. Raper: Can all the Jury see here? That's fine.

Q. Now, Mr. Smalley, I wonder if you could describe to this Jury the general layout of Cheyenne and what facilities it has and where they are located.

A. That is in regard to the residence --

Q. All areas. A. (Continuing) -- areas and the business areas?

Q. All areas, please. A. All areas. Well, I will start up in the northwest corner of Cheyenne, which is contiguous to Frontier Park and the Lions Park and the different lakes north of town, which is in the City of Cheyenne. This one district here (indicating) is known as Capitol Heights. That has been a very successful district. I would say that ninety percent of the homes in there are in the category of, oh, from $14,000 possibly up to $50,000. There is a few that would reach that value. Then from Capitol Heights over into Moorehaven Heights is a brick restricted district that has been developed since 1928 and there are very few building sites left at the present time. Valuations in there would run from $15,000 as high as $50,000 and in a very few instances anything above that.

273] Going east of Central would be Pershing Heights, which is an older district which was started in 1918 but it is a very well kept district, properties in that district would run from $12,000 possibly as high as $23,000 to $25,000.

Coming down to Pershing Boulevard and out towards the military reservation in the north part of town is a very substantial part of town. It is an older part of Cheyenne. And then down across -- bisecting Randall Avenue down to Capitol Avenue and the properties north of there between Pershing Boulevard and the Lakeview Cemetary is an older part of Cheyenne which is still a very good residential neighborhood. There are some businessess, very spotty, in different places there.

And then we come across Pershing Boulevard up into Colonial addition and there is a Black's replat there, and that was started a few years ago and it's completely full, to my knowledge. May be two or three building
274] lots left, and the houses in there from $9000 up to as high as $18,000 to $19,000, and over into Eastridge, which is a fairly new subdivision -- that is, since '47 or '48, I would say -- and is developing very fast. That is another of the higher priced subdivisions in town. Houses in there are from $12,000 on up to possibly $50,000 in some cases, very few. Schools have developed and that is a very good neighborhood. A business district has been reserved for a future shopping center.

Then we come east of that is the U.S. Veterans Administration Hospital, which is regarded as a highly high-classed property which does not hurt any of the surrounding properties at all. Then we have south of the Veterans Hospital what is known as Mountview addition, which has been a very successful development. We have in there a very nice shopping center.

On down here on U.S. 30, part of it is in Mountview and part of it in another addition contiguous to Mountview, with shopping facilities, restaurants and motels and different types business, service business. Then we have the remainder of the Mountview addition in the extreme east part of Cheyenne which is being deyeloped just south

of the old Lincoln Highway U.S. 30 and between the new U. S. Lincoln Highway 30. That is a development in there that -- oh, homes from $13,000 up to $18,000.00. frame and brick.

Then we come south of U. S. 30, we have a new development in here known as the Cole addition. It's quite a highly restricted district. At the present time there are homes being built there, two and three bedrooms, ranging from $15,000 and I heard of one sale recently that was approximately $23,000. Then we come again to a development here (indicating) that was started by -- I can't just recall the name --

275] Q. Fairview? A. Fairview, yes. Fairview addition, which has had three or four different contractors and also Wallick and Volk developing, which has developed two and three bedroom houses in the price range from $9500.00 to, I think, $12,200.00 for the three bedrooms.

Then we come again, here is an older part of the neighborhood that was recently brought into the city, I would say eight to ten years ago, and has been -- well, it's been further developed. That is, facilities are in and have sewer and water and everything so that is on the upgrade.

Then we come across on through, following U. S. 30 on down to our business district which I would say from the Capitol Building and the parks on across to Pioneer Avenue and possibly to Warren Avenue or House Avenue in this area (indicating) of some twelve or sixteen blocks, and this is an older part of Cheyenne but there are some business developments in there, but still some very nice homes adjoining the different parts in through here (indicating) that might be a valuation of anywhere from -- oh, $15,000 on up to, oh, $35,000 to $40,000.

And another older part of Cheyenne and down through here (indicating) I would say, from Thomes and up, oh, possibly to Twenty-fourth Street, where properties there

276] are -- I would say they are, in here east of Snyder and through there, on the upgrade. People seem to have in the last year taken more pride in the properties and the properties have improved considerably in there.

Then we come across to Snyder Avenue and west of Snyder Avenue, there is some residence property in there, and also some lower type rental property that has been somewhat neglected. I would say that that portion in through here (indicating) is probably on the downgrade and would probably end up maybe in some commercial property later. Then we can come on down south and back out U.S. 30, back out into the south side again, what is called South Cheyenne, and there are some properties over in the east part of town that have been a little bit neglected, but I think adverse conditions there might be a little bit from the refinery and from the railroad tracks being so close, and then there has been the new viaduct which has eliminated some properties in here (indicating). That is, the people have become somewhat discouraged and maybe have let their properties go down. There are some very nice properties in the south side. There are some people there that I know that you couldn't move off the south side of Cheyenne for anything, if you would trade them for one of the nice homes up above. They have taken good care of their properties in a good many places. There is a nice business district on Central Avenue extending from the edge of the viaduct clear on out to the City Limits. This is developing fast as far as a business center. You have service stores, grocery stores and -- well, a little bit of everything. Drug Stores and most anything that you would want in a shopping district.

277] Then coming across Central we are beginning to come into a part of properties here that have been neglected. They seem to be on the downgrade, whether it's the vicinity of the railroad or the -- one thing, I will say that financing is awfully hard to get in this part of the area, that is, west of Central.

And then we come on across through our subject property in here and surrounding, and I would say that the surrounding area along Snyder Avenue and in most places there are quite a few lots that are not built on there. Whether there is any market for them or not, I don't know, but I have not heard of any sales recently that have been made or seen any new construction. Maybe financing would be one of the things that would hold it back, but these properties do seem to be on the downgrade through here.

Now we come on over here to our subject property which

is the Van Tassell Terrace and which you should all be familiar with, and over here, which is the Atlantis investment, and we'll call that Mr. Dellinger, who is developing that. And then on south of Cheyenne there is a shopping center here, what is known as the Trading Post, service shops, filling station. That is developing very well, too. Those values along in here do seem to be on the increase.

Q. Now, Mr. Smalley -- A. Yes.

278] Q. Is there any facility going through Cheyenne that divides it in two parts? A. Well, what do you -- if you are mentioning the highways or the Union Pacific Railroad --

Q. How about the railroad? A. Well, the railroad divides -- definitely divides Cheyenne, I would say. I think you can see it. And most any other town you would want to take, along the railroad, that you will find that the south of the tracks and north of the tracks will suffer, called Cheyenne south side. There are certain areas over here that have not been affected too much because people here have taken more pride and respect in their houses, then probably in a pretty good income bracket, and as I said before, you couldn't move them out of there. This is a division, of course, of the town. And you do find some areas that develop faster than others and you will find other areas that you might call more on the blight areas and on the border of an industrial area.

Q. All right, sir, what industrial areas surround Van Tassell? A. Van Tassell -- well, it's surrounded here by the railroad, the Union Pacific shops and the roundhouse is fairly close, I would say within a half mile of the subject property. You have the railroad tracks at this point, a little closer, where would be several engines, and down in here the Union Pacific is developing a warehouse district which they have now a wholesale fruit and supply house, and they have a pipe manufacturer -- concrete pipe and sewer pipe manufacturer.

Q. Would you keep your voice up, please, Mr. Smalley?

279] A. Yes. Whatever other business there is in there -- at the present time, I don't know, but it is set up for an industrial area and is promoted by the Union Pacific Railroad.

Q. Are there any city facilities in that vicinity?

A. You mean --

Q. Does the city have any of its installations out there? A. Well, the only installation that the city would have out in here would be over west of the subject property is the city dumps.

Q. All right, sir, now can you see the railroad from the Van Tassell properties? A. From portions of it, yes. You can look to the railroad and see the engines up on the upper level of the trellis, or whatever you might call it here, of the railroad bank.

Q. All right, now I wonder if you could describe to the Court and Jury the access roads to Van Tassell Terrace.

A. Well, I would say the most common access roads to Van Tassell Terrace is from U. S. Highway 30 and possibly Snyder Avenue, all depending on where the tenants are working and probably through what they call the Snyder underpass. It isn't directly on Snyder Avenue but it is called Snyder underpass and then on to Deming Drive and then east and across to Snyder and to the Van Tassell Terrace. There is another access coming along over the viaduct on Central Avenue from the north part of Cheyenne, comes across the viaduct and on down and I believe it's to Eighth Street or Ninth Street, there is a crossing that comes across there that you have to cross Crow Creek. Yes, here is the bridge here on Eighth. I believe that's shown as a bridge there. And across Eighth Street to the Van Tassell Terrace property. There are other ways of going. You can come out, if you were going shopping to the shopping center over here south of town. you can come and go across what's commonly known as the Fox Farm Road. This is the west Fox Farm Road along here (indicating) or come that way to town. I don't know whether it would be any quicker or not. In fact, I'm sure it wouldn't.

280] Q. Is that road toward Fox Farm Road or the streets from Van Tassell improved in any way? A. The streets from Van Tassell?

Q. Yes, to the Fox Farm Road. A. No, there is just the initial grading in those streets. That is, it's probably down to grade and I can't recall any curb and gutter or oiling from that district to the Fox Farm Road, no.

Q. All right, sir. You can take the chair here now, Mr. Smalley. A. I didn't intend to have my back to the Jury, but --

Q. What would you say about land values in Cheyenne over the past several years, as far as their trend is,

concerned? A. Well, I would say that the land values over the last many years, ever since I have been in the real estate business, have been on the increase.

Q. What sort of an increase has that been?

281] A. Well, it's been a gradual increase. I know that Cheyenne has a steady growth. It has never had a boom growth but it's been a steady growth throughout the years I have worked here and lived here.

Q. Has there been any phenomenal changes in land values over the past several years? A. Well -- in going back to the past few years, if you are taking before 1945 and up to the present time, you could say it's phenomenal, just like any other community, as salaries increased all costs increased and the cost of land has increased considerable over the period back to 1945. There's been a gradual increase since 1945.

Q. It's been gradual, but would you say that surge of increase has been slight or high? A. Well, I would say it's been slight.

Q. But steady? A. It has been steady.

Q. Now, Mr. Smalley, you've been called upon to make an appraisal of the land in Van Tassell Terrace?

A. Yes.

Q. All right, I wonder if you would explain to the Jury what you did, just briefly, to begin with, when were you called upon to make an appraisal of the Van Tassell lands? A. We were called to make an appraisal I believe it was in February of 1955, and I was notified by the Public Housing Administration that Mr. Soloman would arrive in Cheyenne.

282] Q. Who is Mr. Soloman? A. Mr. C. Francis Soloman. He is a real estate broker and appraiser from Salt Lake City.

Q. All right, sir, now just what happened there?

A. Mr. Soloman came to Cheyenne and contacted me and of course he started out the same day that he arrived in town and went to the subject property, which I knew where it was. That is, he didn't have the exact description of it at that time. We went there and we went to the Public Housing Office at the Frontier Villa -- was up there at the time -- and we received from them some plats of the subject property. From there we went back to the subject property, re-examined it as to the topography, the terrain, and the surrounding neighborhood as to the residence, business, commercial or whatever there might be. From there we went

to the City and County Building, checking on different sales in and about Cheyenne that we might use as a comparable in the making of our appraisal. We talked to different representatives of the City Engineer's office and the office of the Public Improvement. We talked to different lending institutions in Cheyenne, men in real estate business, just to get an overall picture in general.

Q. All right, sir, now did you do anything with that information after you had it gathered up? A. Yes, after the information, which took up the better part of two days, and to evaluate, we started working up our information. Mr. Soloman had gone to Salt Lake and with the information he had and with the information that I had, and we conferred with each other with regard to appraisals.

Q. All right, sir, now as a result of your investigation that was made, what did you find?

A. Well, in the --

283] Mr. Hickey: I don't believe the question is specific enough to know whether I want to object to it or not. What did he say with relation to what?

Mr. Raper: All right, sir. I think it's clear he was called on for an appraisal of Van Tassell Acres and investigation followed.

The Court: Are you now at the point where you are going to ask him whether he has a judgment?

Mr. Raper: No, sir, I am going to ask what he discovered.

The Court: I think he may indicate the basis of his final conclusion. Objection overruled.

A. My final conclusion of the subject property -- now as to a comparable, I would say --

The Court: Pardon me, can the Jury hear? I'm sure, Mr. Witness, you can help the Jury by speaking louder or moving closer.

Witness: All right, I will face the Jury more.

Q. All right, sir, maybe I'd better make my question a little more clear. I think we are skipping something here, Mr. Smalley. After you had visited the area and talked with these people and gathered information, what did all that information disclose with respect to Van Tassell Terrace as to its -- the area, what the surroundings and what other things you found in connection with that investigation.

234] Mr. Gray: Your Honor, we object to that. I think that's calling for an unauthorized conclusion of the witness.

The Court: I believe it's permissible as a foundation for his judgment. I think your witness testified to substantially the same thing. Overruled.

A. We found -- I found in my investigating the property and of all the different tracts that we have made in regard to the situation of Van Tassell Terrace, that is, in regard to the subject property itself as a piece of ground without the improvements, that is, the buildings or the utilities in there -- our appraisal was to be made on the basis that Van Tassell Terrace itself did not exist, but to come up with a fair market value of the acreage of 30.89 acres that were known as the Van Tassell Terrace.

Now in investigation of the property and talking to different people on it, we found that it had been an emergency project. It was put there to house workers, whether they were at the air base or the Union Pacific, but during the war in 1943 and 1944 the intent of it was for people that were here for the war effort, and of course they had the cooperation of the city and they had the cooperation of Maud Van Tassell in regard to the ground that the project was built on. But as I say, our problem in appraising it was as the raw acreage and what I used in basing my appraisal, coming down to it, was that any comparable that I might find as of record in the County Clerk's office that would be a property comparable to the subject property. Now there were very few of record, that is, in acreage. There might have been some individual sales in other parts of town which I did not consider as comparable, but what I was looking for was acreage that had been recorded that we could come up with appraisal as of 30.89 acres, that is; the

subject property. We had never in Cheyenee had a housing project except the war emergency projects, low cost, for rental. That is, we had the Careyville acres before, we had the Frontier Villa before and we have had the Van Tassell Terrace. So to find anything comparable in acreage, it was hard to find except the properties that were deeded to Mr. Dellinger, which were in Interior Heights. Now as of record on my examination at that time there were six blocks of land, each containing five acres more or less -- I believe it was five acres exactly that had been sold for $2000.00 for each acre, which would make it $30,000 in all, in the tract that Mr. Dellinger was building the low cost two-bedroom houses.

Q. Now that is a condition that you discovered at the time you first started your appraisal, is that right? That's what you found at that time? A. That was on record at that time. There were six different deeds as of record.

Q. Well now, in regard to this February appraisal, have you brought that up to date? A. That appraisal was brought up to date as of August 25 of 1955.

286] Q. And since that time in February that you first started your appraisal, have you worked on it any further? A. Well, I kept following the trend of real estate, that is, in regard to acreages and anything that has been recorded in and about Cheyenne that might be comparable to the subject property.

Q. Well now, after the time that Mr. Soloman left, did you continue to work with him or have you worked independently? A. Well, I have worked independently on it, because Mr. Soloman has not been available at all times and of course I was here on the spot and looking for anything that might be of record in regard to a comparable to the subject property.

Q. Well now, in your final appraisal of this matter, is that final appraisal going to be a joint appraisal with Mr. Soloman or is that to be your independent action?

A. It's an independent appraisal.

Q. All right, sir. Now after February, did you make any search for further comparables other than in the six blocks you just mentioned? A. Yes, there were some other deeds of record from John and Mildred Arp to Mr. Dellinger on Atlantis Investment -- I believe it was to Mr. Dellinger direct -- in Blocks north of the first forty acres that were bought for the original housing by Mr. Dellinger. And --

Q. All right, sir, excuse me, go ahead.
287] A. And those were recorded -- let's see if I have that date here.

The Court: It may be that you will want to put it in, but aren't those dates a matter of record?

Mr. Raper: Yes, sir.

A. Yes, they are a matter of record. They were based at $2400.00 an acre, I believe, on the recordings.

Q. All right, sir, now during the course of making your appraisal, did you consider any other comparables?

A. Well, I gave it a lot of consideration in my own mind as to other comparables but to me the one comparable—that, in my mind, was what had been bought from John and Mildred Arp by Mr. Dellinger which was contiguous to the subject property.

Q. All right, sir, now have you arrived at some judgment, Mr. Smalley, as to the market value of Van Tassell Acres as of August 25, 1955? A. Yes, I have a definite figure.

Q. All right, now just a moment, please. Are you prepared at this time to explain any opinion as to the value of those acres as of that date? A. In my opinion, yes.

Q. All right, sir. Would you please explain your opinion? A. In my opinion the valuation of the 30.89 acres known as the subject property was $49,424.00 as of August 25, 1955.

Q. All right, sir. Now when you discussed this Dellinger purchase of properties down in there, did you have any consideration with respect to that purchase? A. What do you mean, consideration?

Q. Well, did you see anything peculiar about it or
288] anything of an unusual nature about the purchase of lands at that price?

Mr. Hickey: Object to this line of examination. I don't know what it can be leading to. Does he seek to impeach the sales collaterally? Is that what he is seeking to do?

The Court: Well, I don't know.

Mr. Hickey: I object to the question.

The Court: Is it preliminary, Mr. Raper?

Mr. Raper: It will be his comments with respect to that sale and the current real estate market, Your Honor.

The Court: That he is stating those considerations in his judgment?

Mr. Raper: Yes, sir.

The Court: Well, for what it's worth, I will overrule the objection.

Q. All right, could you explain your consideration of the Dellinger sale -- or purchase, rather, excuse me.
A. As to the amount of the Dellinger sale?
Q. Yes, the amount. A. Well, when I first heard of it -- I heard of it before I seen it of record of $2000.00 an acre, I was rather amazed.
Q. And for what reason? A. Well, in my mind the $2000.00 an acre was more than I had ever heard of any property being sold for development of houses in and about Cheyenne.
Q. And does that include your experience with the
289] higher priced property?

Mr. Hickey: I object to this line of examination because it's wholly attempting to impeach a sale. Now are they building up something here to attempt to show that Dellinger conspired with something --

Mr. Raper: Oh, no, now Mr. Hickey.

Mr. Hickey: I can't see any relevancy.

The Court: Well, I am going to strike that part of the answer where he says he is amazed and described his own state of mind, and I am going to permit the balance of the answer to stand. If you are going to be much longer, Mr. Raper, we will take a recess at this time. If not, I will permit you to continue.

Mr. Raper: Well, I do have three or more questions

here, Your Honor. That may take five to ten minutes to develop.

The Court: I think we will take our recess at this time. Perhaps you can conclude more expeditiously this afternoon.

Mr. Raper: Shorten it down, yes.

The Court: We will stand in recess until 1:30 o'clock this afternoon and remember the admonition of the Court.

(The Court recessed at 12:05 P.M. and reconvened at 1:30 P. M. of the same day.)

The Court: You may proceed, Mr. Raper.

290] Mr. Raper: Thank you.

Q. You are the same Mr. Robert Smalley who was testifying at the time the Court took its noon recess?
A. I am.
Q. Mr. Smalley, I hand you here Defendants' Exhibit No. J and ask you whether or not you have ever seen that before.
A. Yes, I have.
Q. And what is it? A. Well, it's the ordinance number 1132 of the City of Cheyenne and annexation of land to the City of Cheyenne.
Q. And do you know and understand what that ordinance is? A. Quite familiar with it.
Q. Now, I would like to ask you, Mr. Smalley, whether or not that ordinance has had any effect upon land values within the City of Cheyenne? A. Definitely.
Q. And what effect has it had? A. An increase.
Q. In land values? A. In land values.
Q. Now, in the making of your appraisal of the Van Tassell Acres, did you consider that ordinance?
A. That was considered.
Q. And how did you consider the ordinance?
291] A. Well, in my appraisal of it -- I think the ordinance went into effect late in July of 1955 but it had been before the City Council for several months and I think they had two or three hearings on it and finally passed in July. And in my appraisal of the subject property I felt and I

still feel that the date of August 25 of 1955, that you would take the 2¢ per square foot and add it to the cost of land in the city and basing it upon the subject property land that you would price yourself out of the market.

Q. Well now, just what do you mean by pricing yourself out of the market? A. Pricing yourself out of the market is getting your land costs so high or your improved lots so high that you would not have a purchaser for proper financing in that type of property. The acreage, I'm speaking of.

Q. Well now, you state that it caused an increase in value of city properties. Now did it cause an increase to the full amount of the 2¢ per square foot assessed?

A. On properties within the city at that time?

Q. Yes, sir. A. No.

Q. Well, what effect in amount of value would you say that that had? A. Well, the only two concrete examples I can give would be in Eastridge addition, but since that time they have raised the valuation of their lots around $300.00, and in Mountview addition the HKD Development Company or their associates have raised their prices from three to four-hundred dollars per lot in that period of time. That is, up to the time now. It had no reflection on it, I would say, from the time that the ordinance went into effect until the time of our appraisal.

292] Q. That would be as of August -- A. August 25, 1955.

Q. In other words, the impact of the ordinance was not yet felt at that time? A. Not at that time, no.

Q. Well now, these increases in values that you refer to as taking place in Eastridge and Mountview, was that entire increase in value due to this ordinance?

A. I understand in talking to different contractors and the people interested in lots in those districts that the price had gone up three-hundred dollars or four-hundred dollars within -- well, that's within the last two or three months.

Q. In those two districts, was all of that increase due to this annexation? A. I couldn't say as to that.

Q. But that was a contributing factor? A. I would think it would be.

Q. All right, sir, now Mr. Smalley, have you ever heard of any sort of proposal in Cheyenne of any sort of a privately operated multiple family project being developed and costing somewhere around three and a half million dollars?

293] A. I haven't heard of that.

Mr. Hickey: That's objected to, Your Honor.

Mr. Raper: Proper rebuttal, Your Honor.

The Court: Well, I think it's probably too broad. I suppose you have -- well, I'll let it stand as preliminary.

Mr. Raper: Thank you, sir.

Q. Have you ever heard of any other sort of a multiple dwelling project being developed in the City of Cheyenne?

A. No.

Q. Have you ever heard any proposals or plans for any such a development? A. No.

Q. This morning during your testimony you rather lightly passed over the Careyville Acres and Frontier Park. What were those two? A. They were emergency low cost housing units that were built, I would say approximately the same time as the Van Tassell Terrace. Whether it was started that same time, I am not sure, I don't know the exact dates, but it was emergency units for workers at the modification center, personnel at the Warren Air Base called Francis E. Warren at that time, I believe, and also the increase in Union Pacific employees and increase in general war time during the emergency.

Q. All right, sir, what has happened to those?

A. Well, the Careyville Acres and the Frontier Villa have been torn down.

294] Q. All right, sir, now Mr. Smalley, is there any difference between the cost of land for multiple dwelling, that is, low cost multiple dwelling and low cost single dwelling?

A. Buying it as acreage if it was not zoned land, I would say no.

Q. Now in your deliberations and in your considerations in making your appraisals of these lands, have you decided upon what you think that this land is best suited for? That is, what do you think its highest and best use might be?

A. I think its highest and best use would be platting to conform with the rest of the City of Cheyenne in low cost single family dwellings.

Mr. Raper: Thank you, sir. You can examine the witness.

Cross-Examination by Mr. Hickey:

Q. Mr: Smalley, isn't it a fact that you went to Mr. Arp and attempted to buy some property from him in '53 or '54 and he refused to deal with you? A. In 1953 and 1954 I had several discussions with Mr. Arp in regard to buying some land for a group of Cheyenne businessmen who wanted to start building some houses.

Q. And he didn't deal with you? A. He didn't deal with me, he never gave me a definite price.

Q. Now, isn't it a fact that you made this appraisal after you had had these attempted dealings with him?

A. To my knowledge, I believe it was after.

Q. Now, did you consider this property at all in your appraisal for multiple dwelling? A. Not in my appraisal at all for multiple dwelling, no.

295] Q. You did not consider that as a factor? A. We considered every -- if I may add this, we considered every aspect of the property, whether it might be for industrial, commercial, low cost multiple dwellings, low cost single dwellings, or anything that we thought it might be best suitable.

Q. Well, did you consider it as a multiple dwelling?

A. No.

Q. Well now, you knew that since May of 1944 it had been so used, didn't you? A. Right.

Q. But you did not give that use any consideration?

A. I -- in my appraisal I gave what I thought was the best use, was for single family low cost dwellings.

Q. Now, do you know where the sewer and the water are contiguous to Van Tassell Terrace? A. From -- looking into the property, it seems to me that there is one meter right at the edge of the Van Tassell Terrace where it breaks off at the entry way to Van Tassell Terrace, where the city brought the water line up to, at that time, for this emergency use.

Q. And how about the sewer, Mr. Smalley? A. The sewer, as I understand, it's an eight inch clay tile sewer laid in the alley under the concrete pavement.

Q. Now, do you know where those are located, on what street? A. On Snyder Avenue, I'm sure.

Q. Which is to the east of the project? A. To the

296] east of the project.

Q. Now, do you know or did you consider any other sewer or water locations? A. The only other conversation

I had on that was with Ray Sherard at one time when I was forming my definite opinion on the s[illegible] t property in regard to the property being platted c[illegible]eplatted to conform with the rest of the City of Cheyenne.

Q. Well then, so far as you know, the sewer and water locations are on Snyder? A. On Snyder Avenue, as I recall.

Q. Now, do you admit that the fact that the sewer and water is contiguous to an area such as this is an element that should be given consideration? A. It's definitely an asset to the property.

Q. And quite a sizeabl asset, isn't it? A. I wouldn't try to figure how much it would be, or what the asset would amount to, but I know it would be an asset to the property.

Q. Would you go so far, Mr. Smalley, as saying it would be a material consideration in placing value?

A. Being contiguous to the property --

Q. Yes, sir. A. Before it is annexed or after?

297] Q. Well, as I understand, you stated there would be no reason for annexing the subject property, that it's within the City Limits. A. There was a question at one time whether that was within the City Limits, but I think it has been proven now that it definitely is within the city.

Q. I think from testimony in this case and maps offered both by the Government and landowner, Mr. Smalley, you can take it for the purpose of this case it is within the city.

A. It is considered within the city.

Q. And you would say that is a material consideration?

A. Definitely.

Q. Did you give that consideration when you made your appraisal? A. Yes.

Q. Now, Mr. Smalley, in the course of this trial there was testimony that there is a sewer just to the south also, that Mr. Dellinger put in. He put in a storm sewer which runs directly south of Van Tassell.

A. Directly south?

Q. Yes, sir. Do you know the little wallow in there that was a proposed site at one time for a stadium?

A. I don't recall that.

Q. It's directly south of Van Tassell area, and there was a little hollow. That should help you locate it.

A. No. As to stadium, I don't know what you are referring to, Mr. Hickey.

298] Q. Well, do you know the land at all south of Van Tassell

Terrace? A. I am not familiar with it, I have been over it several times.

Q. Well, there is testimony in the record from Mr. Dellinger that without expense to the Government there was a storm sewer placed right down through that area --

A. Uh-hmm.

Q. Which attaches on to the sewer, to the main trunk line on Snyder. A. That's sanitary sewer --

Q. Yes. A. Or storm sewer.

Q. That's right. A. Storm sewer or -- Q. Storm sewer.

A. Storm sewer. Q. You did not know about that?

A. At the time that we were making the investigation of Van Tassell Terrace, there was work going on, on Snyder Avenue, that seemed to me it must have been -- oh, thirty-six -- I would say off hand maybe a thirty-six inch pipe being installed on Snyder Avenue north of where the water meter is for the Van Tassell Terrace. Is that what you are referring to?

Q. Yes. Now the thing I am referring to is a storm sewer that is south of Van Tassell. A. I am not familiar with that.

Q. And you gave it no consideration when you placed this valuation? A. I have no knowledge of it whatsoever.

Q. Except what I have told you that was in the testimony
299] here in the trial? A. That's right.

Q. And you didn't give it any consideration to that, if it is there? A. I had no knowledge of it until you --

Q. If you had knowledge of it, would it have affected your appraisal price? A. I would have to know definitely as to what it served, as to put any value on it at all, from a competent engineer, giving the detail of it and what it would serve, there would be some value to it.

Q. And you would have added -- if you had all these things, you would have added it to the value you gave today? A. To the value of the land that our appraisal was definitely for the acreage itself.

Q. Now then, I understood from your discussion with Mr. Raper that you gave no consideration to the 2¢ acquisition ordinance in appraising this land. A. I made my appraisal on the basis that if the 2¢ per square foot were added to the appraisal I gave, you would definitely have the worth of the land so high that it would be out of the market, in my estimation.

Q. Well, actually, didn't you not give consideration

to -- A. I thought --

Q. The reason you did not give consideration was because you felt if you gave consideration to it, it would place the value too high? A. No, I did not have that in mind at all, Mr. Hickey.

Q. Well, didn't you say it would price it out of the
300] land market? A. If it was put in and added to my appraisal by being in the city and taking what would average throughout the town, what the increase would have been in that period of time, I don't think the difference would be but very few dollars.

Q. What I am getting at is this, Mr. Smalley. You did not give an added value to this land of 2¢ per square foot.

A. That is right.

Q. And you felt that if you did that, that you would raise the price of the land too high? A. Between the time the ordinance went into effect and our appraisal was a period of thirty days, I could see no repercussion in price value in that period of time.

Q. But the ordinance was in effect, you admit?

A. The ordinance went into effect, as I recall, the Monday of Frontier that week. I think it was the 25th of July.

Q. Yes, sir. And you were making an appraisal as of the value of exactly one month later? A. As of August 25.

Q. And in your opinion that acquisition ordinance had no effect? A. That's right.

Q. Now, I think in your qualifications and in your last testimony you stated that you had an acquaintance of two other housing units in the City of Cheyenne in the Careyville and Frontier acres.

A. I mentioned them, yes.

301] Q. Now, what do you know about them? A. I know that they were emergency housing units, same as Van-Tassell Terrace.

Q. Do you know what happened to them and all about them? A. They were abandoned and I believe Frontier was turned over to the City of Cheyenne.

Q. And wasn't the City of Cheyenne actually the owner of the ground? A. They were the owner of the property.

Q. And wasn't the Careyville property turned back to Carey. A. The Careyville property was definitely turned back.

Q. And the houses or the housing was demolished?
A. Yes.
Q. Now, wasn't the housing that was on Careyville much the same type of structure as the house that's on Van Tassell? A. As I recall, yes.
Q. And the Careyville acres were returned to the owner and they subsequently developed them themselves, isn't that correct? A. Now what was that again, Mr. Hickey?
Q. The Careyville land was returned to its owner --
A. Right.
Q. And its owner was given the right to develop it?
A. As I recall, I believe part of it was school.
Q. But the Federal Government had nothing to do with that. A. Oh -- well, I don't know as to that. I was never --
302] Q. And the Frontier Villa, which was another temporary housing project like Van Tassell was returned to its original owner and the houses sold off of it? A. Right.
Q. Do you know anything about the price of the sale of the improvements?

Mr. Raper: Now, just a moment, Your Honor. I think we are getting a little bit beyond the scope of the direct examination, getting into a field that is not pertinent to the issues of this case.

The Court: Sustained.

Q. Mr. Smalley, you have testified that you have had, as part of your business life, development of some areas in Cheyenne? A. Right.
Q. Did you say four? A. Not -- I don't believe I said four that we have developed.
Q. Well, I just didn't hear you. I'm trying to --
A. No. We have had one that I was completely in charge of developing, with Paul H. Moore Realty.
Q. Well now, on the date of August 25, 1955, do you of your own knowledge know of any acreage in the amount of 30.89 which had sewer and water contiguous to it, which was within the City Limits, that could be purchased for development purchases for $1600.00 an acre? A. I don't know of any in Cheyenne because of the limitation of utilities.
303] Q. Well then, it would be fair to say that on August

25, 1955 you knew, or do not know now, of any tract of land in the amount of 30.89 acres that could have been purchased?

A. As of what time? A. August 25, the date of your appraisal, date of the effectiveness of your appraisal, Mr. Smalley. A. No, I do not.

Q. So that this particular land is unique in that then, is it not? A. Definitely.

Q. Do you attach any value to that factor?

A. I have.

Q. Now, Mr. Raper interrogated you in the closing portion of his interrogation with regard to whether or not you know of any proposed multiple dwelling project in the city and you said you knew of none. A. I know of none to my knowledge.

Q. Isn't it a fact, Mr. Smalley, that you know of your own knowledge that the United States Government proposes to sell this particular area in its present condition and present use --

Mr. Raper: Now just a moment, Your Honor. I think this is going far beyond the scope of direct examination and furthermore the disposition of this property that is involved here, or the improvements on this property, are not a proper issue for this case. We are here only for the purpose of determining value and what happens to it in the future is immaterial.

304] The Court: That's true in general, but as a part of the cross-examination I think this witness testified he knew of no plans, and if that's so, I think this is proper cross-examination simply as going to his credibility and information, not that it goes to any point at issue.

Mr. Raper: Just a moment, Your Honor. I think my question went to the issue of any plans for the construction of a housing area.

The Court: I think it's within the scope of the direct examination.

Q. Mr. Smalley, isn't it a fact that you know of your own knowledge that the Government proposes to offer this project in its present use of multiple dwelling houses to sell on the market to the highest bidder? A. Right.

Q. You know that? A. Right.

Q. And isn't it a fact that you know of several groups in the City of Cheyenne who are preparing to bid on it?

A. I have heard of two groups.

Q. So that then you actually do know —

The Court: Well now, avoid repetition. There is no use repeating.

Q. Now, Mr. Smalley --

305] Mr. Hickey: And, Your Honor, I am not doing this to be repetitious, but if it has been gone over, I have forgotten it.

The Court: State your question.

Mr. Hickey: I don't want to be in contempt of Court, is the reason --

The Court: Well, you better hadn't, so state your question.

Q. Mr. Smalley, do you know that the proposed use — the continued use after this time for this area, far into the future, will be for multiple dwelling?

Mr. Roper: Now just a moment, Your Honor.

The Court: I think that goes beyond the scope of the direct examination and is immaterial. Sustained.

Q. Now, if it is a fact that this particular acreage can be used immediately for multiple dwelling unit and you have not given consideration to that, if that is a fact, would it affect your appraised value? A. Not in the least.

Q. Now, Mr. Smalley, in addition to the sewer line south of the Van Tassell area, it was also testified that there was a water main. Now I presume that that may have been one of the matters that you discussed with Mr. Sherard. Did you know of its existence? A. A water main going south --

Q. That is immediately south, coming from the Berger area.

A. Does that go across to the west Fox Farm Road? Or is that a gas line?

Q. The line I have in mind, Mr. Smalley, comes down
306] that street from the Berger area and goes direct to the south of the Van Tassell Terrace area, practically contiguous to it. A. The only water facilities that I know of at the time of the appraisal were those that were pointed out by the water department, where the one meter is set for the metering of the water to the Van Tassell Terrace.

Q. And if there are others, you gave no consideration to them? A. I would take -- on Snyder Avenue I would say that there are other water lines contiguous to this acreage that are serving the other houses on Snyder Avenue and on Sixth, Seventh, Eighth and Ninth. Through there.

Q. Well, Snyder is east, is it not? A. Snyder is eastward --

Q. East of Van Tassell Terrace? A. East of the entrance to Van Tassell Terrace.

Q. And I am speaking of the area immediately south of Van Tassell Terrace. A. I don't think that would be too much of an asset because the water mains would be put in -- as the acreage was already in the city, the water mains would be run and you would be charged the $75.00 water tap for each service, for each property that was built.

Mr. Hickey: That's all.

Mr. Raper: No further questions.

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C. FRANCIS SOLOMAN, called as a witness on behalf of the Government, testified:

Direct Examination by Mr. Raper:

Q. Will you state your name to the Court and Jury, please?

A. C. Francis Soloman, Jr.

Q. Where do you live, Mr. Soloman? A. In Salt Lake City, Utah.

Q. And what is your occupation? A. I am a real estate broker, licensed in the State of Utah, and a fee appraiser.

Q. And what experience have you had in the real estate

brokerage business? A. I have been for the past twenty-nine years actively engaged in the real estate business of buying, selling, leasing, subdividing, insuring and mortgaging real property.

Q. And what offices, if any, have you held in your profession of real estate? A. Well, I am a past president of the Utah State Realty Association. I have served as president for two years of the State's Council of the National Association of Real Estate Boards. I have served for six years and am now serving as a director of the National Association of Real Estates Boards, and I served two years ago as the vice-president of the National Association of Real Estate Boards as a Regional Vice-President, which included the State of Wyoming. I may also state that I am a member of the Salt Lake Real Estate Board, the Utah State Realty Association, the National Association of Real Estate Boards.

Q. What is your background, Mr. Soloman, in real estate
308 appraising? A. Well, I have done a great amount of real estate appraising since the year of 1941. In 1944 I went to the University of Houston at Houston, Texas, and I took their Case Study course I and II in the real estate appraisal, conducted by the American Institute of Real Estate Appraisers, and in the following year of 1945 I completed the requirements and became a certified member No. 1205 in the American Institute of Real Estate Appraisers. I have also qualified as a senior member in the Society of Residence Appraisers. Three years ago I served as president of the Rocky Mountain -- or of the Utah Chapter of the Society of Residence Appraisers. Last year I served as president of the Rocky Mountain Chapter of the American Institute of Real Estate Appraisers and this year I am serving on the Research Committee of the American Institute of Real Estate Appraisers, which is a national organization.

Q. And do you hold any other offices or positions in the appraisal field? A. Yes, I have been appointed as one of three delegates in the United States to represent the American Institute of Real Estate Appraisers in the Federation Internationale Des Geometres -- well, in english it is the International Society of Real Estate Appraisers, which is an organization comprising eleven nations of Europe, Argentina, Israel, Australia, Canada and the United States, and I attended for the first year their conference in Florence, Italy, last September, and I am attending the second

meeting next month in London, England.

Q. What clients do you have in your business, Mr. Soloman? A. I have a wide variety of clients, some of them consisting of those that I am actively on the panel as an appraiser and actively doing work for, as the New York Life Insurance Company, the Prudential Insurance Company. I have previously been with the Equitable Life Insurance Company, the Commercial Travelers Insurance Company and the Pacific National Life Insurance Company. I also do appraising for several savings and loan companies in Salt Lake City and I am the vice-president and the only appraiser for our own company, the Pioneer Savings and Loan Company, a federally chartered institution in Salt Lake City. I also do and am actively engaged in appraising for the various branches of Federal Government, including the Corps of Army Engineers, the FPHA, the Veterans Administration, and I also work extensively for the State of Utah in their condemnation, road department, and also for Salt Lake City, Salt Lake County and for the State of Utah.

Q. Have you ever testified in any cases before as an expert appraiser? A. Yes, sir. Many times.

Q. Have you been called upon to make an appraisal of certain acres in Cheyenne, Wyoming, known as Van Tassell?

A. Yes, sir, I have.

310] Q. As a result of being called upon to make such an appraisal, what action did you take? A. It was in 1955, the early part of the year, that I came to Cheyenne at the request of the Federal Public Housing Administration to appraise a parcel of land known as Van Tassell Terrace, which I was asked to appraise as well, unimproved land. My instruction of the appraisal was that I was not to consider any physical improvements that had been placed on the tract of land, containing 30.89 acres, and that appraisal at that time was to have been dated along in February of 1955. This report I completed.

Q. All right, sir, what did you do thereafter with respect to that request to make an appraisal? A. In the month of May I was requested to revise the appraisal, to check the facts and conditions of my previous appraisal, to make a study of an changing conditions, and to bring my appraisal to August 25 of 1955, which I have also completed.

Q. All right, sir, now when you embarked upon this appraisal, I wonder if you could explain to the Court and Jury just how you went about it? A. After obtaining a knowledge

of the assignment, which was to appraise only the raw land, giving no consideration to any of the man-made improvements that were placed on this 30.89 acres, I proceeded to study the elements, the facts and conditions existing within the property, and the facts and conditions existing without,

and to do that it required first a knowledge of the
311] economic conditions of the City of Cheyenne, which I secured from the Chamber of Commerce and other reliable and competent sources, and also to study the physical condition of the utilities existing to the property. After studying the facilities of water, the existence of the utilities at that time, I also wanted to get the pulse of the community, of the growing areas, of the increase in population and what was considered the better districts in the eyes of the public. And so I made a study of the entire residential sections, the business sections, the industrial and the commercial sections, and then after studying that, getting the background, I went into the County Clerk's and Recorder's office of this county and I investigated what came out as eleven properties of sales that had been made within a reasonable time. So with those eleven sales that I procured not only from the Recorder's office but from those reported from reliable real estate men, savings and loan men, and bankers in the community, I then proceeded to go out and look at these eleven properties. I investigated the eleven and after considering their location and the elements surrounding them, I felt that there were perhaps six comparable sales that could be used. So then I went into the detailed facts of six comparable sales that I felt was the approach to value, due to the fact that we had comparable sales here which I would investigate to reflect a willing and well informed purchaser and conducted with a well informed and willing seller, and from that information and computing, compiling, analyzing it, I came to a final conclusion of value.

312] Q. And today you are in a position to express any judgment that you have arrived at -- A. Yes, sir.

Q. As to value? A. Yes, sir, I am.

Q. And what, Mr. Soloman, is your judgment as to value?

A. It is my opinion that a well informed and willing purchaser would be justified in paying for the Van Tassell area which was 30.89 acres, providing they had no improvements there that they could consider of any value -- that he would be justified in paying from a seller who would be justified in selling, knowing all of the conditions existing and feeling there was no value in any of the improvements,

the sum of $48,000.

Q. All right, sir, Now Mr. Soloman, using such means at hand as you can conveniently to demonstrate, would you explain to the Court and Jury how you arrived at that conclusion? A. Yes. The approach to value is the first thing that must be considered. There are three approaches to value to determine value which I consider the capitalization approach, where you capitalize the income from a property, and it applies well to an apartment house or a business building or a long term lease or a motor court, I am dealing with vacant, unimproved land. I could not see that an approach to a hypothetical piece -- improvements on a piece of unimproved land was an approach that could be practically used. It's a very delicate approach because a very small factor of income or expense in a hypothetical case reflects a tremendous amount when it's capitalized on the value. I didn't use that approach.

313] Then we have what we call the replacement cost approach, and that's where it applies to a building that's already constructed and you want to derive the value by figuring what it would cost to replace the building and then depreciate it. There was no building here to replace. I had no improvements, so there was no replacement cost approach.

So in my opinion the only approach that was practical and that a buyer -- a willing buyer and a willing seller would use, would be the comparative data approach. By comparative data is a comparision made in the minds of a buyer and a seller of comparable sales or offerings, having a relationship of value to the subject property. I studied a total of eleven comparable sales. I looked at all eleven of them, and one of them was the sale in 1952 of the subject property that I made. That was very commonly known that this large sale of 667 acres of land was made for a price of $45,000, and I investigated that sale. And then I went into areas east of the city and to the north of the city and I investigated five sales of parcels of land that I felt were going to be used by a subdivider for a purpose similar to that which the subject property may be used for. But those were in a different district, and they were, I felt, not the comparable data that would best reflect the value for a typical buyer. So I finally developed five comparable sales within an area of one mile of vacant land parcels that I'd feel have a

relation of value. And I have based mainly my conclusion upon those investigations of those five parcels, which I have in detail inspected, analyzed and processed.

314] Q. All right, sir. Now Mr. Soloman, would you demonstrate to the Court and Jury how you made your comparisons and what you came up with? A. Yes, I can -- is it all right if I leave the stand here? My comparable sale No. 1, I found to be an area that was sold in about, as I recall, February, 1955. I'll use this as -- this shows October 19, 1954 -- let's get these dates. I am going to identify this as comparable A. Now in October, 1954, there was a sale made from John C. Arp to Gayle Dellinger which I found. I found in this sale, it was a parcel of land that contained 1,856,800 square feet of land. That amount of land is 43.08 acres. So there was in October, 1954, there was 43.08 acres and that was sold for $80,000. I checked the terms of that sale. That sale was made on the basis of $2000.00 down, $10,000.00 to be paid July 1st of 1954 and the balance within three years, with no interest on it. Now the sale price per acre was $1857.00 for that land. Now when I got to that point, I went out and I looked at that land. This land sits directly to the west of the terrace and it's in this area here (indicating) comprising Lots 14, 13 -- pardon me, comprising 28; 29, 30, 31, 34, 35, 36 and 37. Now this parcel of land, although it was plotted at that time, had no improvements on it. However, it did have the sewer lines that were adjacent to the property and it had water that was adjacent. The physical aspect of it was rolling hills, and in addition to that there was a physical element that I considered comparable to the subject property in this respect. I had checked with the Federal Housing Administration and the Veterans Administration regarding the financing, and they said they would be more interested in financing and would give a better loan and approve a better dwelling on this parcel of land than they would the subject property, this vacant parcel.

315] Now No. 2, I checked the physical view and appearances and I found that this had a surrounding of other vacant land to be developed, and the subject property of Van Tassell Terrace directly to the east had a group of dilapidated shanties, you may call them, old houses, vacant lots. There was no pride in ownership at all. Lawns, flowers, practically non-existent. I also found that the approach to this Van

Tassell Terrace demanded that one go up Snyder Street and pass that dilapidated district of houses, unattractive, to get to Van Tassell Terrace. However, this approach to the area out here (indicating) that was to be developed had an approach as one could cross under the viaduct that is here (indicating) and come along a road in this area to it, which had a better approach to value and a greater selling appeal. The possibilities of financing, the view, the physical contour, the location in my opinion gave it an advantage of twenty percent over the subject property. I felt that a willing subdivider who was going to develop this acreage of forty-three acres here would be justified and would be willing to pay twenty percent more to get that better piece of property with the better surrounding. So in treating the subject property and using this comparable, here is my analysis.

316] I figured that there was a twenty percent advantage, which was $371.00, which makes that $1486.00, would be the comparable value per acre. $1486.00 would be my comparable to what I would say the No. 1 -- that would be this one here (indicating), to show you the comparable No. 1, and the thing I wanted to stress was that it was my desire to get all my comparables as closely related to the subject property as possible. This one sits right next to it at that point. So comparable No. 1 gave me a comparable which, after investigating, I felt was reliable and could be used. So there I had comparable No. 1. Now I developed through to comparable No. 2. Comparable No. 2 I found was a property consisting of eight acres. This eight acre tract was sold on a contract on October 19. This is No. B comparable. It was sold on a contract October 19, 1954, and that area was eight acres. It was a land area and it was conducive to a subdivider or a developer for use. Therefore I felt it had relationship. The sale price was $18,000, and that sale was made from John Arp to Atlantis Investment Company for the purpose of subdividing and developing into single family, low cost housing units. Now I analyzed that piece of property and here is where it set (indicating). This piece of property was within about one hundred-fifty feet of the west property line of the subject property. It sat right there, over this platted area, which is known as all of Block 13 and the west half of Block 14, Interior Heights. That sits right here (indicating). That was known as my comparable B,

comprising eight acres of land. I felt it had a relationship and I broke that back per acre and I found that per acre that Mr. Arp paid for that per acre, he paid --

Q. Let me correct you a moment. Who paid for it?

A. Pardon me. The Atlantis Investment Company. Mr. Arp received from this, a value of $2250.00 per acre on this property. This was parcel B.

Now I have another problem again. You have to develop your judgment, real estate experience and analysis of the property, the comparision, the one thing which is the percentage of value increase or decrease that one property has over another. This one I gave an advantage of twenty-five percent. I went over and looked at the property and checked it, and I found that the physical aspects of it for the appearance on this edge and the general location, the contour, which is quite important, of its -- the leveling and the cost that it would take to develop grading and also the fact that a buffer strip had been left. Now this buffer strip is very good in subdividing. I am in the subdividing business, I do this type of work in my own business with my own money, and I know that where you can develop a buffer strip between a lower price or a lower developed area, you create a better situation for one development rather than to have it facing it. So this B, with that buffer strip between, I gave a twenty-five percent advantage for the layout over the Van Tassell Terrace. You will notice the plottage shows one thing I was interested in. I was interested in the financing advantages of it, the access to it, the view that went out, and I bring your attention to the contour. On that, a twenty-five percent advantage was $562.00, which gave our comparison -- our comparison was $1888.00 per acre on the comparision. Now I have two comparisons that I have completed.

318| So then I went in and I found another property that I felt had a relationship of value, so I developed a third. I developed a third approach which I will call comparison C. This was another tract of land that joined parcel B, the comparision B that I have. This was an interesting development also. Comparison C was the outcome of an original contract of purchase between Mr. Arp and the Atlantis Investment Company dated in '54, but it was changed. That was revised -- which I found when it came to the deed and

the actual conveyance in the platting of it, and also in the areas of the land taken and also in the price that was charged. So I investigated the back line or the background of that condition, and here was the outcome. In Lots 11 and 12 of Interior Heights, of which I am now referring as comparable C, the north end of that area which is north of Van Tassell Court -- a part of that was considered of little value due to a very bad drop of contour. The contour of the land took an abrupt drop to the north and to the west and it was understood that some sewerage difficulties were there to develop it. So a deal was consummated on December 17 of 1955 -- later -- for the sale of this, of a new area. The conveyance -- and this new area consisted of seven acres of land which was platted with streets and -- well, mostly streets. There were no alleys considered there. But the land areas of seven acres with the street area set right there (indicating), which I felt was a comparable because of its close relationship and the general contour of the land. Now let's review comparison C and see what I could find there. The date was December of 1955, when the deed went on record, but there was an agreement and a supplemental agreement that preceded this, and which negotiated the sale. So therefore I used it, because I remembered my appraisal date was August 25, 1955. This is the date the deed was recorded. However, a supplemental agreement superseded this. Now the area, seven acres, the price paid per acre was $2429.00. Now I have an adjustment to make on this. I have been out there, I have looked at this property. There is a curved street there. The original contract of sale for this property was for a smaller sale of money, but I have talked with the man who made this purchase of the Atlantis Investment Company, who disclosed that the area to the north-- he made -- his statement was that it had absolutely no value, and he gave the reason because of the drop-off in the contour and the problem of sewerage or getting any type of sewerage development to it. However, he had contracted earlier to make a purchase on the basis of approximately $2250.00 per acre, but he had paid for this $2429.00, but he had eliminated this little area to the north. So you see, he raised the price per acre on what he bought and his price was $2429.00. However, the advantages also to that I rated the same as B because of the access road coming down here, the view to the west and a much more desirable view to the south than -- I should say to the north and to the northwest than Van Tassell

had. I also took into consideration the financing possibilities. I knew that a lending institution providing FHA or VA insurance were available, would be more receptive to loaning their money to C than they would on Van Tassell Terrace for these physical reasons. Therefore, getting on with a twenty-five percent advantage, which amounted to that property of $607.00 per acre. $607.00 per acre, so the comparison is $1822.00. Now that is the comparision rating of subject through the means of my comparison C.

Now I found another comparision that I liked and I used it -- comparison C is the little piece here (indicating)-- now I checked another subdivision development that was purchased by contractor in March of 1953, which was a little over two years -- over two years prior to the time of this valuation. Now that was a property known as the Leisher-Black addition, and that's located within the City Limits, south of west Fox Farm. And it's this area right here on the map (indicating). I visited Leisher-Black addition and I checked the deed at the Recorder's office. I checked the contour of the property and this was the information that I received. This was comparable D, and if you will notice that this is approximately some fifteen, sixteen-hundred feet away from the subject property, a very short distance, perhaps two-fifths of a mile. This property was bought by Mr. Black as the buyer and Mr. Leisher as the seller in March, 1953. This is going to be comparable D. D is this red one here now (indicating). Now I found that involved in that sale was 25.54 acres. Then I also investigated the property and I found that on this property when he made the purchase was an old house, and I went out to look at this old house, but they had moved the house and they had remodeled it and pulled it around some, but he paid for the twenty-five acres -- his price for 25.54 was $14,820.00.

321] Now that $14,820.00 represented the old house. Now I figured that that old house in its original condition --

Mr. Hickey: I object, Your Honor, to the witness's effort here to divide a sale by separating what the purchase price showed and allocating an amount to improvement that was located thereon.

Mr. Raper: I think that's a question to be considered

by the Jury in its evaluating, Your Honor. And is proper consideration of this opinion evidence. Furthermore, there is already in evidence the testimony of Mr. Black with respect to what he sold that house for and the Court permitted that to remain, so that it is properly evidence that --

The Court: Well, I'm going to receive the evidence as indicating the basis of this witness's judgment. It may be an improper judgment or not. The objection is overruled.

322] A. My judgment is not in harmony with what that property sold for. I figured the old house --

Mr. Hickey: We object to the witness making a speech to the Jury.

The Court: I think there is some substance to that objection. I ask the witness to respond to the question.

A. I estimated --

The Court: State the basis of your conclusion without argument.

A. The value of my conclusion was that the old house was worth $1000.00. So I deducted $1000.00, after seeing the old house, from $14,820.00 and it was my conclusion that Mr. Black paid for the land -- he paid for the price of the land $13,820.00. That price per acre was $650.00, on that basis, was his price of this land. Now there was a time lapse when Mr. Black made this purchase was March of 1953, and I made an investigation of the general conditions existing here, the increase in land values, in building costs and other factors affecting the time between 1953 and 1955 and I felt that there was a -- that there was a 20% increase that he would have had to have paid, had he been buying this land on August 25, 1955. So I gave him that twenty percent increase -- I'll write that small here -- a twenty percent increase would have been $2764.00 that he would have paid, had he been buying it August 25, so I felt he would have paid $16,584.00 on August 25. Now on the basis of $16,584.00 for 25.54 acres, price per acre was $650.00. Now I checked the location advantage. I went up to the property and I looked at the area, I looked at the access to it down this

Central Avenue and into the city along the roadway that it has, the contour of the land and the slope and the
323] view, the general condition that a typical buyer will pay for a home in an area, and I found that this justified a higher class area, and there is always a relationship in a subdivision of the value of the land to the value of the improvements. The higher the improvements, the higher the land value. So I checked those conditions over. I also checked the conditions of the relationship of the sewer to the property and to the water to the property, because of the comparison. The first thing I found out that the location advantage in my opinion is twenty-five percent advantage over the subject property. So on the basis of $650.00 per acre -- and if there was a twenty-five percent advantage there would be $162.00, which would bring the subject property down to $488.00. That would be $488.00. But I had to realize something. Here was some property that was not as close in to the advantages of sewer and the water as we had right here adjoining the property. So I investigaged what those costs were to bring the sewer mains to the same comparable position to this property as I had to this property (indicating) figuring both are vacant. That's one of the first thing that a prospective purchaser inquires on --

The Court: Avoid argument and state your basis.

324] A. The added sewer and water cost -- water, $675.00. My comparison, $1163.00. That's comparable No. D.

I have one more comparable that I use, known as comparable E, the Rose Ella subdivision. The Rose Ella subdivision is located --

Mr. Hickey: Before you start -- Your Honor, I would like to interpose into the record a further objection to the use of comparable D we objected to this morning, and I would like the record to show that we object to the use of E as a comparable because of its remoteness and lack of similarities with the subject land.

The Court: The objection is overruled, it being deemed that the reference goes to the weight to be determined by the Jury, rather than to its admissibility as a basis of this

witness's testimony.

A. Comparable E does not include all of the property that I am covering with this card. And comparable E is known as the Rose Ella subdivision that is located on west Fox Farm Road and just east of U. S. Highway 85 and 87, known as Central Avenue. This comparable, I find, and Rose Ella subdivision was the result of a sale made February 28, 1955, and the sale was made by Mr. Nation to the Boise-Payette Lumber Company. The price that was paid that the revenue stamps showed and that I found on the deed and substantiated was $30,000. Now this $30,000 sale was listed as the sale of lots, a part of the subdivision shown in the designation E. Now these lots varied in the front footage. There was some variation in the depth. They had alley ways or public driveways at the rear that varied in size and the streets fronts had a variation in size, but I computed the lots sold in the area to an acreage basis, including the proportion of the alleys and the streets involved in the sale. There were $1575.00 front feet of frontage with alleys, which computed to seven acres of land. So the price paid was $30,000 and the area was seven acres. That involved twenty-six lots, building lots. Now the price per acre of this is $4285.00, but this seven acres of lots, comprising 1575 front feet included curb and gutter, sewer, water, a graded street, engineering and abstract with every lot, so that improvement cost I analyzed broke down and I found that that reflected an improvement cost of $1957.00 per acre, that it cost to develop this with Mr. Nation, which gave him a raw land per acre value of $2328.00. Now that is the raw land value. I had a problem of judgment of developing, whether the this land was better land, equal land or poorer land to the subject property in the eys of a prospective purchaser, knowing all of the advantages of ownership. It was my conclusion that this property, which I analyzed, had an advantage of all the properties, including the financing of his homes, contour and so forth, of thirty-three percent or $774.00, so I deducted the $774.00 from his raw land value for the advantage for my comparison, which gave me my comparable value of $1554.00.

The Court: If this is a convenient breaking point, I think we will take a ten minute recess.

(Ten minute recess.)

326] The Court: You may proceed.

Mr. Raper: May it please the Court.

Q. You are the same Mr. Soloman who was testifying just previous to the recess? A. Yes, sir.

Q. Would you proceed with your demonstration, please?

A. I have now completed the five comparable sales that I used in the preparation of the appraisal, and after completing the five comparables, I then developed my summary of value and I will briefly show you my summary: My comparative A is $1486.00. Comparative B, $1688.00. Comparative C, $1822.00. Comparative D, $1163.00. Comparative E, $1554.00, which I totaled, amounting to $7713.00. I then divided that figure by five, which gave me an average value of $1543.00. With that information I then took fifteen -- I rounded that out to $1550.00 per acre and I multiplied it by thirty-one, which is roughly the acreage, and I came up with $48,050.00. That is the process through which I gave most consideration in establishing the market value.

Q. All right, sir. Now I wonder if you could, Mr. Soloman, mark those comparative values on each one of the colors there. A. Yes. A, $1486.00 per acre. B, $1688.00. C --

The Court: Just mark them. Never mind encumbering the record by repetition.

Witness: Yes, sir. (Marks on exhibit.)

Q. All right, sir, now would you take the witness stand, please, Mr. Soloman?

327] Mr. Raper: Would you mark this for identification?

(Government's Exhibit No. 10 was marked for identification.)

Mr. Raper: At this time, Your Honor, we would like to offer into evidence Plaintiff's Exhibit No. 10, which is the entire sheaf of charts just developed by the witness

during his testimony.

(At bench:)

Mr. Hickey: We object to this introduction, Your Honor, on the grounds that it is not the best evidence. The best evidence is the testimony of the witness itself, which is in the record.

The Court: I feel that that objection is good. I am going to receive the other exhibit, I don't recall its number, as being a map on which have been superimposed the designations of the five tracts and the statement of the summary figures with reference each, which corresponds to the information placed upon your exhibit by your own expert witness. I feel, with regard to the development of the chart, that would not be proper, particularly in view of the absence of objection in demonstrating to the Jury his figures. Everything on the chart appears in the record and is before the Jury and if we adopt the plan of letting witnesses write out their testimony as they give it, then every witness could do so and the trial would be delayed and if only one witness does so, it gives undue emphasis to his testimony. I think the situation is about equal now, since you, Mr. Hickey, had your witness indicate his summary figures on the map --

328] Mr. Hickey: Just his conclusion.

The Court: Or his conclusion with respect to values. If you care to offer your map on which that information has been superimposed, I would receive that.

Mr. Hickey: And not the charts --

The Court: And I won't receive the tables demonstrating the means by which he arrived at the conclusion, since it's already in the record otherwise.

Mr. Raper: But the summary you will admit?

The Court: I won't receive the summary as written up on your Plaintiff's Exhibit 10. I will receive the summary as he has carried it over on to the map.

Mr. Raper: All right, sir.

The Court: You may have your exception, of course. I know you don't agree to that.

Mr. Raper: Yes, I understand.

(To Jury:)

The Court: The offer will not be received since I have indicated I am of the opinion that the testimony is already in and before the Jury.

Mr. Raper: Thank you, Your Honor. At this time --

Mr. Hickey: May we ask leave at this time, Your Honor, to turn the summary over?

The Court: That may be done and should be done.

Mr. Raper: At this time, Your Honor, I would like to move the re-admission of Plaintiff's Exhibit No. 2, showing the values per acre for each comparable marked thereon together with all additions to that map made during the testimony of this witness.

329] The Court: That exhibit has already been received without that information superimposed on it.

Mr. Raper: Without that information on it.

The Court: That is Plaintiff's Exhibit 2, was it?

Mr. Raper: Plaintiff's Exhibit 2, Your Honor.

The Court: That exhibit may be deemed received and is received, including the additional plats or markings and the figures thereon as contained on the respective additions, where it may be seen, "A", "B", "C", "D", and "E".

Mr. Raper: Thank you, sir.

Q. Now, Mr. Soloman, you indicated earlier in your testimony that you had considered in your deliberations Mr.

Arp's purchase of land from the Children's Hospital. Why didn't you use that as a comparable? A. Well, that sale --

Mr. Hickey: That's objected to, Your Honor. I don't know -- the gentleman has testified as to what he has used as his comparables. I don't know that counsel can go into everything he didn't use.

The Court: I believe that matter has been pursued enough. The objection is sustained.

Mr. Raper: All right, sir.

330] Q. Now, Mr. Soloman, in the making of your appraisal did you study the best use to which that land could be devoted? A. Yes, sir, I did.

Q. And did you arrive at any judgment as to what you think is the best use of Van Tassell Acres? A. Yes. In my opinion it would be a residence development of what we would call low cost housing. And it would consist of one, two, three and four family units which could be sold individually and owned individually by a purchaser for use and also may have the potential, particularly along the Snyder Avenue frontage, which is the east frontage of Van Tassell Terrace, due to the low quality of deterioration to the east, for multiple family units that might be rented for income purposes and could also be sold as duplexes, triplexes or four-plexes as the market would seem to justify in the opinion of the subdivider.

Q. All right, sir. Now is there any differences in land values where the land is used for multiple dwelling or for single family dwellings? A. Yes, sir, there is.

Q. What is that difference in values? A. Well, that would be -- the difference in value would become in the quality of the development, of the multiple or single family unit. A quality multiple family unit that would have a high rental and would be in a higher district would demand a higher land va ue.

Q. Well, is there any difference in land value when land is purchased for building of single family dwellings on it or multiple dwellings in the lower price bracket?

A. In my opinion there would be no difference in the 331] value of the raw land, the vacant land, to the potential

buyer if he were going to develop the improvement with the same facilities to the occupant, whether it was a one family, a two family or a three family dwelling. The value of the raw land would be in the same price bracket.

Q. All right, sir, now in your study of -- and in making this appraisal, did you consider any value with respect to the undivided one-half interest in minerals owned by the Children's Hospital? A. Yes, I did.

Q. And what value did you arrive at? A. I considered the one-half interest of those mineral rights to the Children's Hospital at one dollar.

* * * * *

332] Cross-Examination by Mr. Hickey:

Q. Mr. Soloman, is it your opinion that what a parcel of land will produce in its highest and best use indicates its market value? A. No, sir.

Q. What does it indicate, sir? A. It indicates what a willing and well informed buyer is willing to pay on the open market for a piece of property that is offered for sale by a willing seller, knowing all the values of use that the property can be put to, is willing to pay for it.

Q. Well, perhaps you misunderstood my question, Mr. Soloman. What bearing does the highest and best use have upon the determination of the market value? A. It is the -- it is the basis from which the greatest amount of value could be derived from the property.

Q. And what weight is that given in your consideration? A. That is one of the first considerations given.

Q. Then you might say that it is a major factor --

A. Yes, sir, it is.

Q. In the determination of the value. Now what do you say is the highest and best use of the Van Tassell Terrace area? A. A low cost housing unit or housing development of one and multiple family units.

Q. Well, that was the thing that was disturbing me
333] on your direct examination and why I am interrogating you about it now. Are you saying in effect that the highest and best use for this particular area is a low cost multiple housing unit? A. Not -- I am appraising thirty acres of land and it's a combination of multiple and single low cost housing units.

Q. I think I am clear now. But you say that a portion of the land should be used for multiple dwelling and a portion of it for single units, is that correct?

A. Yes, to determine the highest and best use.

Q. And you say that the highest and best use is a divided proposition, with part of it being used for single dwellings and part of it for multiple? A. Yes, sir.

Q. Now, would you break that down into what percent of the thirty acres is best used for multiple housing and what percentage is used for individual dwellings?

A. The exact percentage I haven't studied, but I would say that the area consisting of one hundred - fifty feet paralleling the east border of Van Tassell Terrace would be most suitable for mutliple housing units. I also feel that a designated area in the northeast corner would be most suited, due to the view that I have developed and the area below and the drop in the contour.

334] Q. Well, in your best judgment would that be approximately thirty percent? A. No, I don't think so. I think it would be perhaps fifteen percent.

Q. Fifteen percent? A. Yes, sir.

Q. Now you say this with the full knowledge that this land has been occupied for a period of twelve years as a low cost multiple dwelling unit location? A. I have the knowledge of that, yes.

Q. Yes. Now when did you make your first appraisal? Did you say in February, 1955? A. February of 1955, yes, sir.

Q. And would you tell me, sir, if the figure at that time was greater or less than the figure you testified to today? A. That figure at that time was the same as the figure I testified as to today.

Q. Then in February, 1955, when you made your first appraisal, you appraised it at the same figure as you testified today as being the value in August of that year?

A. Yes, sir.

Q. Now how did you confirm the sales you used? And I presume that was done in February, 1955.

A. Yes, sir.

335] Q. How did you confirm those sales? A. At that time the first attempt was made through the contact with the County Clerk and the Recorder's office. I met with the clerk, who I was introduced to by Mr. Smalley, who was very cooperative in giving to us the records that we could examine

of the various properties that we found sales had been made on.

Q. Now, what records were they? A. The actual -- the records that were recorded in the Courthouse.

Q. Well now, were they sales contracts? A. No. In most cases they were deeds.

Q. Well, you spoke today of having examined the sales contracts while you were testifying. When did you examine those sales? A. I had information on the sales contracts at that time and I examined a copy of the sales contract some two weeks ago here in Cheyenne.

Q. Now I hand you herewith what has been marked for identification Defendants' Exhibit F, which purports to be a copy of the first sale contract, is that correct?

A. Yes, sir.

Q. And that in your opinion was the date of the first sale, was it, sir? A. Yes. However, I questioned at the time the wording of this contract, if it were a sale, due to the fact that on about Line 8 it states the sellers agree to give their option to the purchaser, and the purchaser agrees to buy from the sellers, and I --

336] Q. Is that option given a specific time in the agreement? A. As I recall, this is the option in which after a total of three years the contract did not forfeit and only a six percent interest charge was spoken of until the final payment were made, but in this agreement I found the deficiency in the forfeiture clause. The contract was so worded that in my opinion, from my experience in drawing contracts, which I do, there is no forfeiture clause where the seller could retake the property upon the failure of the purchaser to perform. He only had to pay six percent interest on the unpaid portion of this price to keep his contract in force, but I saw no enforceable contract under the terms of this -- which I have went through.

Q. What is the date of that agreement?

A. This is March 27, 1954.

Q. What? A. Pardon me, the 27th day of May, 1954.

Q. And that is the agreement of the first sale or the one you used as comparable A, is that correct?

A. I used that as comparable A, that is correct.

Q. I notice in your testimony you gave the date of October 19 to comparable A. Did you intend to do that or should it be corrected to that date? A. The date of the 19th was the date -- as I recall it from memory -- that the

deed was given and put on record.

Q. So you considered the date of the deed rather than the date of the contract? A. The date of the contract as this is worded could be construed as an option agreement due to the fact that there was no forfeiture clause and the word "option" is used in it.

337] Q. And on the second one, did you use the date of the deed or the date of the contract? A. The second -- you mean the amended contract?

Q. Your Area A. A. Area A, I used the date of the contract, as I recall.

Q. So that in the first instance you used the date of the deed and in the second instance you used the date of the contract? A. That's my recollection.

Q. Because they were on the same date, I believe.

A. Yes.

Q. Now, you say that you draw contracts. In addition to your qualifications, are you a member of the bar, an attorney? A. No, sir.

Q. But you draw contracts? A. Yes, sir.

Q. Now, your appraisal then has not increased in value from February, 1955 to your testimony today relative to August 25, 1955? A. Not on the subject property.

Q. Now, do you consider the anveraging of sales as the best possible manner in which an appraiser should arrive at a figure? A. Well, that is one of the methods, together with the judgment and experience and the background of information collected. If you can get sufficient comparable sales, yes, sir.

338] Q. And you feel that that is the best possible way of obtaining the -- an average figure is the best possible way of making an appraisal of land? A. Of vacant, unimproved land, yes, sir.

Q. In your opinion that's the best. Now going to your sales, did you consider the contour of the land at the time of the sale when you considered Sale A? A. Yes, I did.

Q. Did you have the information that there were some grading and filling required? A. I saw that grading and filling in process.

Q. Why didn't you add that to the sales price?

A. Due to the fact that the subject property -- the Van Tassell Terrace has a very similar -- in fact I shouldn't say similar -- they have a more pronounced grade variation than the subject A property. In the northeast corner of

Van Tassell Terrace at a distance of some, perhaps sixty feet, seventy feet, I found originally was a twenty-eight foot drop in the contour and that that had been filled at the date of the appraisal.

Q. It had been filled prior to the date of the appraisal?

A. It had been filled prior to the date. I had the contour map of 1943.

Q. Well now, did you ever go upon the premises of your Sale A before it was filled in? A. I was on the premises of Sale A -- no, not when -- I was on it during the process of the development of Sale A.

Q. Well, but were you on there after the area had
339] been filled in? A. Yes, I was on the area last night.

Q. Well, but I mean the first time you were on the area, had the hole been filled in? A. A portion of it.

Q. Well now, Mr. Soloman, this morning you were in Court all morning, were you not? A. Not all morning, no, sir.

Q. Were you here all day yesterday? A. No, sir. Part of the day.

Q. Were you here when Mr. Dellinger testified about the hole that was on A which cost him $9600.00 to fill and he said there was no comparable hole on Van Tassell Terrace?

A. No, I didn't hear that.

Q. Well, if you heard that and it were true, sir, would that authorize you to add $9600.00 to the sale price of Sale A? A. No, sir. I feel that the contour of the subject property would have a reasonable relationship, if not more than $9600.00, to put it into the position that the parcel A is as of today.

Q. You feel that the contour of parcel A and the contour of the subject lands are not similiar?

A. I feel that parcel -- that the subject property would have a greater amount of grading to do to put it in exactly the same condition as parcel A.

Q. Did you give that consideration? A. I did.

340] Q. Now I notice that in Sale A you did not give an adjustment for the period from either the date of the contract or the date of the deed up to August 25, 1955 -- which was a period of one year or more or less.

A. Would you repeat the dates again, the first one?

Q. The date of the contract is March 27, 1954.

A. May 27?

Q. May 27, yes, sir. A. Yes.

Q. Between that date and August 25, 1955, which is a little more than a year, you gave no adjustment for that period? A. I considered that condition and considered the questionability of the preliminary agreement and in the low cost housing and the fact that this was the first development in that area, I did not consider that in that short span of time that a willing purchaser could see an increase in the land value.

Q. Well, how do you conform that then with your Sale B, which actually is for more money than Sale A? Isn't that indicative that there truly was an increase in value?

A. Yes, Sale B reflected an increase in value due to the fact that it was adjacent to A, which was then developed, and that there was a start in the housing project.

341| Q. But you gave no adjustment for that recognized increase? A. In the period of time --

Q. In the A area? A. Over the period of time?

Q. Yes, sir. A. That -- B was a later sale than A.

Q. Yes, sir. And it was before the date of taking, was it not? A. A short time, a relatively short time.

Q. So that it indicated an increase in the value of the land in that area? A. A relatively short time elapsed between those two.

Q. But it did indicate an increase in value, did it not? A. I rated that as a --

The Court: Now, wait a minute. The question is, did it indicate in your judgment an increase in value? Now respond to the question.

A. Yes. If I may answer it this way --

The Court: You answer the question and then you can make an explanation. Did it or did not indicate to you an increase in value?

A. Yes.

Q. It did indicate an increase in value. But you gave it no consideration? A. I treated that as an advantage of twenty-five percent over the subject property in the comparison that I made.

342| Q. Well, but how did you treat it with regard to the

subject property? A. The price per acre was $2250.00. The sale price was $18,000 -- which the other property reflected $1875.00 where this piece reflected $2250.00 --

Q. Per acre? A. Per acre. And I treated it as an increase.

Q. You treated it as an increase, but when you got down to your percentages, you gave the subject A lands a twenty percent advantage over the Van Tassell Terrace area, did you not? A. Yes, sir.

Q. And you gave the subject B lands, which sold for a greater price, a twenty-five percent increase, did you not? Why did you do that? A. Because in my opinion parcel B had the advantages over parcel A of having to the south of it a developed area and a later date, which gave it a better road, and it had a buffer area of another housing development to the east of it.

Q. Well, but didn't you testify that B was actually placed there adjacent and contiguous with this Van Tassell Terrace which you decreased twenty-five percent in value less than B? A. Yes. My observation of B, due to the strategic location, was worth twenty-five percent more than the same area on Van Tassell Terrace, and one of the reasons was the contours I found in parcel B, which was a better contour.

343] Q. And what is the buffer area you speak of? About what distance? A. The buffer area, I would judge is perhaps a hundred -- 170 -- 162 feet.

Q. Now, Sale B you gave no adjustment for time either, did you, sir? A. From October -- no, sir.

Q. And at that time it was indicated that Sale C, which occurred on December 17, I believe you testified, the same purchaser paid considerably more, $2400.00, or several hundred more per acre, so that in the three sales actually weren't there increases in value in that short period of time? A. Not appreciable values that could be determined in any sizeable amount. The variation given was due to the location.

Q. Yes, sir. Well now, isn't it a fact, disregarding entirely Van Tassell Terrace, that area A was the least sale of the three? A. The first sale.

Q. The first sale was sold for the least money?

A. Correct.

Q. And you had designated that that sale was made on October 19. The contract says May 27th, but which ever

it may be, within a relatively short time, on October 19 area B came into existence and it has, according to your figures, a two-hundred dollar increase in value. Isn't that true? A. Approximately.

Q. And then area C, which was within a month or more
344] or less, sir, to the sale of area B, has another -- according to your figures -- approximately two-hundred dollars increase in value.

A. I did not treat it as an increase.

Q. Well, but isn't it a fact that area B is $1688.00?

A. Yes, sir.

Q. And that area C is $1822.00? A. Yes, sir.

Q. And isn't that physically an increase? A. That's over the property taken, but that's not in accordance with the contract that was written.

Q. Well, doesn't it actually mean this, sir? That Mr. John Arp received $200.00 more, according to your figures, for area C than he did for area B? A. No, sir.

Q. How much more did he receive? A. He received practically the same price, due to the fact that the remaining property that was deleted from the two blocks was practically valueless property. So per acre -- we're dealing on an acreage basis --

Q. For raw land. A. For raw land. The second was about the same because you must include in parcel C that low area for the overall picture.

Q. All right. Then will you say this: That Mr. John Arp received more money for B and C -- or C than he did for A? A. Yes.

Q. Then there is -- he actually received more money
345] in his pocket, indicating an increase in value?

A. No.

Q. During those few short months? A. Increase -- indicating an increase in value for the property he took?

Q. For the property he sold. A. For the property that was sold, yes, sir.

Q. He got an increase in value? A. Yes, sir.

Q. Very well. Now you gave no consideration to that?

A. Yes.

Q. In your adjustment? A. I did.

Q. All right, what adjustment did you make for an increase in value in Sale B? A. I felt that the adjustment in value of B in the value was partially due to the buffer strip that was eliminated and that still is in the name of

Mr. Arp as a less valuable piece, and that parcel C had an area to the northwest of an area practically vacant ground that was eliminated from the deeded property.

Q. And you reduced the value of Van Tassell Terrace five percent more than you did the area A? A. Yes.

Q. So that you compensated by increasing your reduc-
346] tion to stabilize the actual increase in money Mr.
Arp received in his pocket? A. And considering the valueless land, the waste land.

Q. Now, what was the total consideration of parcel C, which was seven acres? A. The total consideration was $17,000. That was in two transactions, one on December 17, 1955, and January 26, 1956.

Q. Well, to the seven acres that you considered, sir, what was the total amount? A. $17,000.

Q. The total valuation or sales price then for the seven acres was $17,000? A. Represented on two deeds, one for $12,000 and one for $5,000.

Q. And that then, with your calculations on B, if you take seven into $17,000, that would be more than $2,000 an acre, would it not? A. Yes.

Q. Two-thousand-what, sir? A. $2429.00 per acre.

Q. Well then, how do you reduce it on your compilation to $1822.00? A. Could I turn the map?

Q. Yes. Maybe I can help you with it, Mr. Soloman.

A. You cant C?

Q. Yes.

The Court: I may say, if counsel examines with reference to this proposed exhibit, it may well be admitted in the records.

347] Mr. Hickey: Well, Your Honor, he asked leave to refer to it.

The Court: Well, I am just saying, if you examine with reference to it and the other side does --

Mr. Hickey: Well, I will not.

The Court: I will entertain a motion to admit the exhibit.

Mr. Hickey: Well, I will not examine, Your Honor.

The Court: He can use it for his own purpose of refreshing his recollection.

Mr. Hickey: All right, if he has refreshed his recollection, may I turn it over?

The Court: Yes.

Q. Have you refreshed your recollection, sir?

The Court: He has his notes.

A. I was going to give you my computation there.

The Court: I may say this, I have no particular objection to letting it in if both parties agree. The basis of my ruling is that, like all other evidence before the Jury, Mr. Soloman's evidence is oral. Now if you take just part of the evidence and write it out and let it go to the Jury, it may unduly emphasize it. If all the evidence were written out, that would tend to equalize. That was the basis of the ruling, not that there was anything wrong with the computation.

Mr. Hickey: Well okay, sir.

The Court: It's in the same position as his oral testimony.

348] Q. Can you answer the question orally, sir?

A. Yes, in round figures. The parcel C that I valued for the land taken at $2429.00, I deducted to derive my comparison with the subject property of $607.00, which was twenty-five percent of $2429.00. That $607.00 represented the advantages that the parcel C had over the comparison with the subject property on an acreage basis.

Q. And then that was an additional twenty-five percent, is that right? A. Yes.

Q. Now, Mr. Soloman, in confirming these sales, you examined the deeds, did you not? A. No.

Q. You did not, sir? A. No, sir.

Q. Well, where did you get the $5,000 and $12,000 figure? A. From a photostatic copy of the deed and from the records in the Courthouse themselves.

Q. Well now, did the photostatic copy of the deed which showed a $12,000 figure -- was it seven acres, more or less? A. No.

Q. It was how much? A. It was broken down into a group of lots that were replatted under a new platting.

Q. Are you able to say how many acres it did convey, sir? A. There is an exhibit here, if I may borrow.

Q. Yes. A. This, I think, was referred to as Exhibit 349] 7, is that correct?

Q. Yes, sir. A. Exhibit No. 7 is a dedicated plat of Blocks 11 and Block 12 and then there was a rededication of that plat showing this Van Tassell Court and the development of new sizes of those lots.

Q. But can you tell me the number of acres --

A. Yes.

Q. That were in the -- and I presume you are using that to refresh your own recollection? A. I am.

Q. Would you do it, please? A. I have used this exact map that was prepared on a scale of one inch to one-hundred feet.

Q. It's been offered in evidence. A. You will notice the little line that I have drawn prior to its admission across this map, which is dividing the area that Mr. Dellinger took, and if you will notice that this piece of Lot 2, that he got title to, is about the same size as the area of this piece of land right here (indicating) that was omitted. As an appraisal we have taken -- to square this off I have drawn the land to get the figure -- this here from this side of the street -- I have taken the dimension from this street --

Q. Well now, Mr. Soloman, will you answer my question. I want to know how many acres were contained in the deed. Now if you can tell me that, tell me. If you can't, say that you can't. In the $12,000 deed, photostatic deed.

A. The $12,000 deed described the property as lots 350] and not as acres.

Q. And you made no transfer of lots to acres?

A. Yes, sir, I made them all to acres.

Q. All right, how many acres did you transfer?

A. Lots 10-16 in Block 12, as the deed recited -- those lots were sixty by one-hundred twenty-five each. Lots 2-11 in Block 11 were sixty by one-hundred twenty-five each, and those sold for a consideration of $12,000.

Q. And how many acres did that contain? A. In that

piece -- that's only part of it. We have twenty lots listed, Lots 5-24, both inclusive, in Block 12, and that was deeded on the old plat and in the interim the new plat was introduced, so I had to get -- I had one group of lots on twenty-five feet by one-hundred twenty-five feet. I had another group on sixty feet by one-hundred twenty-five feet.

The Court: Well, what is the net result? The question is, do you know the acreage involved in the description in the deed?

A. Yes, sir.

The Court: Having a consideration of $12,000.

A. Yes, sir.

The Court: Well, what, if you know that, without any explanation?

351| A. 7.007 acres.

The Court: All right. Now if there is further explanation, counsel can ask for it, on one side or the other.

Q. Well then, the next deed, which was the $5,000 deed, as I understand it, how much -- A. Pardon me, this is both deeds. This is both deeds.

Q. You didn't separate it. Then you can't tell me the number of acres in the $12,000 deed? A. Yes, I could by taking a few minutes to compare it.

Q. Well, you haven't compared it and I am not going to delay it. You didn't segregate it.

A. I didn't segregate the two.

Q. But you know that those contain the total amount?

A. Yes, sir.

Q. And you used the two deeds as one, rather than separate them? A. That's correct.

Q. Now, that shows an increase in value, does it not?

A. Yes, sir.

Q. And that was a -- you gave no adjustment in favor of the landowner of Van Tassell Terrace for that increase?

A. I adjusted that on twenty-five percent.

Q. And rather than being a twenty-five percent increase to the landowner, it was a twenty-five percent decrease, was it not? A. To derive my comparative value, yes, sir.

Q. Now, going to Sale D, on Sale D, as I recall it, you did conclude -- Sale D was a sale made by Mr. Black, if I recall properly. A. Yes.

352] Q. And you did give an increase in value from March, 1953 to April 25, 1955, did you not? A. Yes, sir.

Q. And that was for an increase that you felt he was entitled to because of the passage of time, is that correct?

A. Not only. It was also the improvement of the property in the development around it.

Q. Well now then, how did you arrive at the twenty percent? What part of the twenty percent was allocated to improvement and what part to the passage of time?

A. The desirability of the property through the passage of time, through the shopping center development and other facilities that I saw in the area that had developed and increased from March, 1953 until 1955, the lapse of some two years.

Q. Well, where did you get the improvement figures on that sale? A. The improvement figures?

Q. Yes, sir. A. Of the general market condition increase?

Q. No. A. And also the development of the area. I felt the willing buyer -- that the general market had increased.

Q. No, what I am speaking of, sir, in your testimony you allocated a certain amount to the improvements that were put upon that land and the improvements which came down to it. I think a water line and sewer line that were brought from the city to the situs.

A. I gave it a credit.

353] Q. Yes. Now where did you get those figures?

A. I got that credit from the distance that the sewer was from the property, which I estimated at $2.00 a foot, instead of $1.00 which I received figures on, and I also got the figure that that figure would cost $225.00 for the additional water cost per lot, which I reduced to a common denominator of a fifty foot lot, would be $225.00 per lot more to parcel D than to Van Tassell Terrace. That was in addition.

Q. That was a credit to the owner of the real estate for his expenditures? A. No, that was a credit to Van

Tassell Terrace for the advantage they had --

Q. You increased the value of Van Tassell Terrace?

A. I credit it for my comparison, the additional sewer cost and additional water cost that Van Tassell Terrace had that parcel D did not have.

Q. And you credited that to Van Tassell Terrace by virtue of acquiring those figures from whom?

A. The costs?

Q. Yes. A. On those figures the estimated cost of the distance and information that I was able to secure from Mr. Black.

Q. Did Mr. Black tell you that Mr. Arp had contributed some $6,000? A. Yes, he did.

Q. And you considered that? A. Yes, sir.

Q. Now going to parcel E, which you discussed, which I believe was your final and concluding parcel --

A. Yes, sir.

Q. I didn't clearly understand the reason that you considered that thirty-three percent better than the subject property in valuation. A. The reason that I considered that as a thirty-three percent advantage over the subject property was the proximity that it was to the U. S. Highway 89, the contour of the property, the surrounding area, and the fact that in my opinion a willing purchaser of a subdivision site would consider that due to the surrounding area and the quality of the other units and the new shopping development that was there, and the potential future that it had at thirty-three percent greater value to him and a thirty-three percent better type house would be built on it.

Q. Well now, Mr. Soloman, do you consider the existence of a night club, the One-Twenty Night Club in this area, as a factor increasing or decreasing the value?

A. I went to that night club and inspected and I am familiar with the night club.

The Court: The question is, do you consider it --

A. I did consider it.

Q. As an increase or decrease? A. I feel it is not a detrimental influence of value.

Q. And did you consider the thirty foot drop in this area that Mr. Nation testified to this morning on the immediate east line of the Rose Ella addition?

A. I gave particular attention to that drop and examined

it carefully, yes, sir.

Q. Did you consider that an increase or decrease?

A. I considered that a slight decrease.

Q. And without that, how much value would you -- how much decreased value did you give because of that?

A. This was an overall value per acre of the land, and my analysis of the sloping area was that upon the completion of the development of the balance of the property that those sloping lots would be very desirable for a two-level home.

Q. Now, Mr. Soloman, all of your comparisions the range from approximately two years from the date of taking, is that not right? A. No, sir -- of --

Q. Will you tell me the dates, please? There is the '54 date, October, 1954 for A and B and for area C there is the date, I believe, of December, 1954, is that correct?

A. Area C, that property was re-negotiated for. Re-negotiated for, contrary to the preliminary agreement on December 17 of 1955 and January 26 of 1956.

Q. And that was after the date that you were to consider? A. That these actual transfers were deeded.

356] Q. Yes. A. Yes, sir.

Q. Now, the area D, what you have designated as area D, when was that consummated? A. March, 1953.

Q. March, 1953. And area E? A. Area E was February 28, 1955, approximately six months from the appraised date, five months.

Q. Then as I take it, the three sales that you used, A, B and D -- A. A, B and what?

Q. D. Were in '54 or before? '53 and '54.

A. A --

Q. B and D. A. I am not too familiar with those. D was March, 1953, for which I adjusted and B was October 19, 1954.

Q. And A. A. A was October -- the original negotiation was October 19, 1954.

Q. The original negotiation? A. October 19, 1954 on the original contract and I don't have the date -- oh, I do have the date, the date was -- no, I don't have the date of the deed.

Q. All right. Now did you recognize from those various dates in your examination that there had been an increase in value of lands at the subject area?

357] A. Yes, I recognized those lots had increased in value

in various areas.

Q. But you gave no consideration of that increase to the subject property? A. Yes, sir, I did.

Q. But you did it by a deduction, did you not?

A. No, sir, I did not. I did it by a comparison, by a percentage.

Q. But you added no money to what you had come up with in February, 1955, did you? A. No, sir.

Q. Now, on your average figures, I think you testified at the beginning of my examination that you felt that an average was the best possible way of appraising this property.

A. Yes, sir.

Q. Now there is a difference, I believe, in your high average and your low average of approximately fifty-seven percent, is that right? A. I haven't computed it.

Q. Well, is your high $1822.00 and your low $659.00?

A. Yes -- no, my high is $1822.00 and my low is $1163.00.

Q. Your low is $1163.00? A. Yes, sir.

Q. And what is the $562.00 figure? A. There is no $562.00, if I can refer to my plat --

358] Q. Well -- A. I'd like permission to see if I did make a mistake.

Q. Maybe I can correct here, sir, and I apologize to you. Your high was $1822.00. A. That's right.

Q. And your low was $1163.00. A. Yes, sir.

Q. Making a difference or a spread between your high and your low of $659.00, is that correct? A. That sounds correct.

Q. Or a fifty-seven percent differential between your high and your low, is that correct? A. I haven't computed it.

Q. Well, if it were, wouldn't -- do you consider that a reasonable area within which to reach a just compension figure on the subject property? A. Yes, sir, if you have enough comparables.

Q. And you used four? A. Five.

Mr. Mickey: Five. That's all. Thank you.

Mr. Raper: No redirect, Your Honor.

The Court: You may step down.

Mr. Raper: At this time, Your Honor, the plaintiff would like to move the indulgence of the Court and owner, and request on the part of the Government for the Jury to view the premises, the subject of this action. Now as far as the time is concerned, the Court may prefer to do that after rebuttal.

359] The Court: Have you completed your case in chief?

Mr. Raper: Yes, sir, we have, but I want the view to be considered as a part of our case in chief, Your Honor.

The Court: Well, if the view is taken, why the view will be ordered from the standpoint of both parties.

Mr. Raper: I realize that, but I want to make the request.

The Court: The request may be deemed as a part of your case.

Mr. Raper: Thank you, sir. Just one moment, I would like to check our record to make sure we have everything in.

The Court: Very well.

Mr. Raper: The Government rests, Your Honor.

Mr. Hickey: I would like to confer before determining on rebuttal for just a moment.

(At Bench:)

The Court: Do you have any objection to a view of the conditions we might agree upon, or do you desire that that matter be taken up during recess?

Mr. Hickey: No, Your Honor, we just would confer with the Court about --

The Court: The conditions. Very well. Will your rebuttal be so protracted as likely to recess and take this up tomorrow or advance tonight?

360] Mr. Hickey: I think possibly I would take a half hour.

The Court: It would possibly be very desirable to finish it tonight if we could and then view the premises.

Mr. Gray: I think if we could organize it a little, Your Honor, we might save some time.

The Court: Your idea would be to continue it now until tomorrow?

Mr. Gray: Yes, I think we would save some time.

Mr. Hickey: And then possibly while we are discussing instructions the Jury could view the premises.

The Court: Well, the only difficulty there is you gentlemen would have to agree that counsel would not accompany them then and I find in my own practice I always felt a little easier if one of counsel went out and stood on the side line.

Mr. Raper: I would want to go. I think that the view of the premises are part of the evidence of the case and something that deserves discussion and we want to know what the Jury has seen.

Mr. Hickey: Yes, but John, you don't want to go outside the Wyoming statute, you don't want to comment on it.

Mr. Raper: Oh, no.

The Court: No, I always require counsel, if they go, to go and stay together and remain away from the Jury without comment unless they both agree with the consent of the Court that the bailiff may point out a particular point or that the Court --

361] Mr. Gray: Will you be there?

The Court: Well, I have usually gone out for a view to be present with counsel so that the Jury sees both counsel are there and there is nothing to be resolved against

either side because of any absence.

Mr. Raper: That's fine, that sounds like the way it should be done.

The Court: I would be inclined to continue the matter until nine-thirty tomorrow if you can pretty well assure the Court that your rebuttal will not be extended.

Mr. Hickey: It will not be more than half an hour or an hour. As I said to the Court, I want to cut it down to nothing if it is possible.

The Court: Gentlemen, for the record here, after excusing the Jury or before the Jury, might be just as well before the Jury, would it not be well to complete the record on notice to the various parties and to the Children's Hospital? I would like to state in open Court that I have conferred with Mr. Walter Hodges and I think that the document the city signed should be placed of record.

Mr. Raper: It is filed.

The Court: Oh, it is filed.

Mr. Raper: Yes, sir. I think it is.

The Court: Suppose we take that matter up and it might be just as well to have it taken up before the Jury so that they can see that that matter is out.

362] Mr. Raper: Yes, sir.

(To Jury:)

The Court: Now, gentlemen, I have referred before in consultation with counsel and before the Jury that among the parties defendant in addition to John C. Arp and Mildred K. Arp have been named the City of Cheyenne, the county of -- what county is that?

Mr. Hickey: County of Laramie, Your Honor.

The Court: County of Laramie and the Children's Hospital

Association. There now appears from the file under date of July 10, 1956, and filed on that date, a disclaimer filed on behalf of the City of Cheyenne, Wyoming, by Philip White, City Attorney, reciting a waiver of any notice of trial and disclaiming any interest in any compensation awarded in the case. For all practical purposes may it not be deemed that any prior claim to the streets may now be deemed to not constitute an impairment of the title of the Arps so that for the purpose of this proceeding the Arps may be deemed the owner of the fee without reference to the improvements, not withstanding the prior claim of the city.

Mr. Raper: Well, the mineral interests --

The Court: I am coming to that.

Mr. Raper: Well, I am speaking with regard to the interest of the Arps.

The Court: Yes, I'm coming to that. I say as far as the city is concerned.

Mr. Raper: It's my understanding, Your Honor, that this claim is waived, any compensation, it looks like they are out of the picture.

363] The Court: That's true. I don't want to be involved in any question of whose favor this claim is entered and my practical view of it is that the Arps may be deemed to be the legal owner, apart from the mineral interest which we will discuss in a minute and the claim of the city without reference to the claim of the city. Is that correct?

Mr. Hickey: That's right, Your Honor.

Mr. Raper: Well, as far as the intesest, Your Honor, Mildred K. and John C. Arp own the fee, including an undivided one-half --

The Court: I understand that, Mr. Raper, but we have a disclaimer. In whose favor is it? Is it to the Children's Hospital? If so, we will have to go into the question of title militating against the Arp title. My idea is that as far as the Arp title is concerned any claim of the city does

not stand as against them. Is that correct?

Mr. Raper: That's correct.

The Court: All right. Now we come to the claim of the Children's Hospital Association. The evidence here discloses that if the undivided one-half interest in mineral rights is worth anything at all, it is worth merely a nominal consideration. Now for all practical purposes then, isn't that a matter for the Court to make an award of that mere nominal interest, since the evidence is undisputed and since the Children's Hospital has not demanded trial by Jury. You both concur in that?

364] Mr. Raper: We concur in that, Your Honor.

Mr. Hickey: Yes, sir.

The Court: So that the form of verdict need not mention the Children's Hospital at all, and for all practical purposes the Arps may be deemed the complete, legal owner except and aside from the claim of the county, which we will next turn to, except that I am going to instruct the Jury that they can give no consideration to mineral rights because the evidence shows they are of no value. Do you gentlemen concur in that?

Mr. Raper: Yes, sir.

Mr. Hickey: Yes, sir.

The Court: All right. Now passing to such claims, if any, by the county, which motivated their being named a party, I take it that if a claim does exist, it will be a claim for taxes or a tax lien. Do you gentlemen concur that that matter is no concern of the Jury and that whatever that situation may be can be determined by the Court after the Jury's award is in?

Mr. Hickey: Yes, Your Honor.

Mr. Raper: That's strictly a legal question, Your Honor.

The Court: Very well. In determining the form of verdict then, I take it that a form may be drafted which makes no reference except in the title to any parties other than Mr. and Mrs. Arp and the Jury will simply return a general verdict for just compensation in accordance with the Court's instructions as to the determining of them. Is that the view of you gentlemen?

365| Mr. Raper: Agreeable, Your Honor.

Mr. Hickey: Yes, Your Honor.

The Court: Very well. Ladies and gentlemen, we do have to get some of these legal problems out of the way and this happened to be one that could be well understood here before you, since I am going to have to instruct you on this determination and you will understand that better because of this discussion. We may have some additional testimony, we may not. There seems to be no point of holding you folks around for that information since time for adjournment in the evening is about here. As the case nears the stage where it is going to be submitted to you, it continues important that you bear in mind the admonition the Court has given you. Not only keep free from collateral influences, but free from any justifiable suspicion at all so that we don't waste time in having to re-try the case again because of some misunderstanding. You will now be excused until 9:30 in the morning and the Court will stand in recess.

* * * * *

The Court: Proceed.

Mr. Hickey: Is it the Court's desire for us to put on our rebuttal before considering the offer of viewing the premises?

The Court: Yes.

366| Mr. Hickey: Thank you, sir.

GAYLE DELLINGER, called as a witness on behalf of the defendants in rebuttal, testified:

Direct Examination by Mr. Hickey:

Q. Mr. Dellinger, you have testified in this case prior to this? A. Yes, sir.

Q. On two occasions, once for the landowner and once for the Government? A. Right, sir.

Q. You are reminded that you are still under the obligation of oath taken when you were first sworn as a witness.

A. Yes, sir.

Q. Mr. Dellinger, I hand you herewith what has been marked by the United States Government as Plaintiff's Exhibit 7. It purports to be a dedication of the area known as Block 12 and Block 11 in the Interior Heights addition. I hand you it for the purpose of refreshing your recollection and ask you if that has regard to this area indicated on the Defendants' Exhibit No. K with the roadway made through it in this fashion? A. Yes, sir.

Q. Now were you in Court yesterday when Mr. Soloman was testifying? A. Yes, I was.

Q. And were you here when I was attempting to cross-
367] examine him? A. I was, sir.

Q. And I was asking him to attempt to break down for us the proposition of this $12,000 deed. A. Yes, sir.

Q. Now, I notice that on the defendants' exhibit there that you joined as a person asking for the replatting of that area. A. Yes, sir, I did.

Q. And you joined as an owner of the portion at that time? A. Yes, sir, I did

Q. Could you explain to the Court and Jury where the consideration of Mr. Soloman in that particular area was erroneous, and may I hand you this to use?

A. Thank you, sir. At the time of this filing which according to his testimony included seven plus acres, I had previously purchased the southeast part of Block 12 on the terms of the contract which called that I pay so much per lot; the balance of the land included in what was classed as Sale No. C, I believe, or Sale No. 3 rather than being a $7,000 purchase, was a $12,000 purchase. It included seventeen lots which are represented on this plat of the last portion of what was termed Sale No. 3. My contention is that rather than being a $17,000 sale, it was

a $12,000 sale and constituted twelve lots represented on this plat, which I have testified previously made those sites approximately $700.00 a site, or $2800.00 to $2900.00 an acre, was my previous testimony.

Q. Which would have been more per acre than testified
368| to by Mr. Soloman? A. That is right, sir.

Q. Thank you. Now, Mr. Dellinger, in the testimony of Mr. Soloman yesterday, he indicated that in placing a value on the subject lands, he valued them -- the Van Tassell Terrace area at a less value than your two contiguous projects, and he said the reason, as I recall it, for his valuing your lands higher than this was because of the condition of this land. Could you state, sir, what your opinion is with regard to that? A. My opinion would be first that in arriving at the valuation of the subject property that naturally I have taken into consideration the physical aspects of the subject property. In the first purchase from Mr. Arp in this area (indicating) we had quite a depression that had no natural drainage. We were of necessity obligated to not only fill a certain area around houses, we were obligated, as I testified before, to put a storm sewer in the area at a cost of approximately $21,000. In purchase No. 2 we had a similar situation here that is present on the north side of the subject property. We did some grading in here, cutting and bringing the dirt in and filling. I think the general area is -- rather, that the subject property in relation to the property that I bought generally is comparable as far as physical aspect of the land is concerned in relation to raw land.

Q. You would not agree then with Mr. Soloman's deduction of 20% on this land and 25% on Sale No. 2?

A. No, sir, I wouldn't. My contention is that in the
369| development of land that I have been engaged in in the last ten years, that development of streets, housing -- any new development increases land continuous to it, or land that is bordering, to my way of thinking, rather than deducting from the value of adjacent lands, it especially increases the value of the land.

Q. Mr. Soloman testified yesterday with regard to a buffer area which was located in what I am pointing to on Defendants' Exhibit K, called a buffer. Is there such a buffer zone? A. There is a half a block of land there that I had included in the contract with Mr. Arp. It is in this area that I have built two full blocks of housing here and

would have continued a full block here on the half block that you speak of as a buffer zone. I had graded the site and put a half block of curb and gutter and sidewalk in there before I determined that some of the buildings, or at least one of the buildings on the subject property encroaches into that street. I had already obtained FHA commitments for the row of houses there, which as a result of that building being in the street were transferred on down to another block.

Q. Mr. Soloman testified, Mr. Dellinger, with regard to the proposition of blighted areas in there. What is your observation with regard to whether or not the area has been blighted? A. Certainly a visual inspection of the site, in my opinion the buildings on Van Tassell are a blight to the area. The minimum of maintenance and upkeep on those buildings have made it detrimental from the physical aspect in relation to the development in the entire area.

370 Q. You were in Court when counsel for the Government and counsel for the defendant landowner stipulated that in ascertaining the value of this land no consideration was to be given to the improvements? A. That's right, sir.

Q. Is that the manner in which you have attempted to appraise this property? A. That's right, Mr. Hickey. I have attempted in my mind to visualize the piece of ground restored to its original condition. In other words, the building is completely removed and with no regard to any present streets or utilities, facilities.

Q. Now then, do you have plans for further developing the area? A. Yes, sir.

Q. And considering the testimony that you heard of Mr. Soloman's yesterday, would you still maintain the same value on the subject land as you testified to on August 25, 1955?

Mr. Raper: Just a moment, please, Mr. Dellinger. I think that that's getting outside the scope of rebuttal, Your Honor, as calling in a witness here to testify as to what his plans are. If it had any place in the case at all, it would have been properly a part of their case in chief.

The Court: I think that's true, Mr. Hickey.

371 Mr. Hickey: I thought, Your Honor, perhaps it was opened up in the defense on the testimony of both Mr. Smalley and Mr. Soloman.

The Court: As to future plans?

Mr. Hickey: Yes, sir.

The Court: Since the property is to be condemned as of August 25, 1955 --

Mr. Hickey: Very well, sir.

The Court: I don't see any issue on that point of future plans.

Mr. Hickey: I will withdraw the question.

The Court: Very well.

Q. Mr. Dellinger, as of August 25, 1955, what would you value that property at? A. I valued it --

Mr. Raper: Now just a moment, Your Honor, I think that's clearly a part of their case in chief.

The Court: Well, yes, I think, Mr. Hickey, that the witness has already expressed his valuation of the property. There has been rebuttal now, it doesn't do any good to repeat that valuation because it will be assumed that his testimony stands, unless he wants to correct it.

Mr. Hickey: Thank you, Your Honor, and I will withdraw the question.

The Court: Yes. Very well.

372 Q. Now, Mr. Dellinger, yesterday there was testimony with regard to the need for housing in the area. You are the gentleman who has developed this area principally. What did you find with regard to the need for housing in this general area?

Mr. Raper: I think, Your Honor, that that also is a part

of their case in chief. They have covered it in their case in chief and it has no place in rebuttal.

The Court: Mr. Hickey, I don't mean to cut you off, but there is something new now. There was testimony going to that point. It seems to me that the witness has already gone into that matter and we can't indefinitely keep calling witnesses back when it's gone into. I believe his testimony is in on that point. If there is something additionally on the point other than he has testified to, it may be brought out.

Mr. Hickey: Thank you, Your Honor.

Q. Testimony was given yesterday by Mr. Soloman, Mr. Bellinger, with regard to some blights in this general area (indicating). Now do you know what blighted property Mr. Soloman was talking about? A. Yes, sir.

Q. And you recognize that condition? A. Yes, sir.

Q. Did it exist when you started your improvement?

A. Yes, it did, Mr. Hickey. However, there is not any -- on the area that you designated, there is only one house of any kind in this area. East of Van Tassell there are some substandard houses.

Q. Did that in any way affect the sales of your property?

373] Mr. Raper: Now just a moment, Your Honor, I don't think that that's material to the issues of the case here. I think that it's properly part of their case in chief.

The Court: I think it is proper rebuttal, based upon some of the Government's testimony.

Q. You may answer. A. May I answer the question this way? I have no actual way of knowing that it affected or did not affect our housing property. We encountered no problem, as far as sales in our area was concerned, but we have sales ahead, I believe all the time in the last two years that this project has been underway. We have never had a sales condition that indicated that anything affected adversely. The fact that we had sales in advance, that statement is the reason that I say to you that I know nothing adverse to it.

Q. Now just one more question, Mr. Dellinger. Yesterday Mr. Soloman and Mr. Smalley continually referred to the areas No. 1 and 2 on the map as low cost housing and indicated that the entire area -- I believe Mr. Soloman indicated -- was a low cost housing area. Is that true?

A. I don't feel that way about it, Mr. Hickey. We, in laying out an area and platting it, we start with an area that we term economy housing or industrial housing. It's designed by the program by Federal Housing Administration on a national basis to provide -- using their own slogan -- houses for the masses. Their contention is that the average housing that has been provided throughout the country has been such price-wise that people in what you call the low income bracket and actually from $225.00 a month $300.00 a month income bracket-wise have not been able to qualify for Government insured loans on $11,000 to $15,000 housing, which the large volume of housing has fallen into that bracket. So to encourage low cost building, building in the $7,000 to $10,000 bracket, the National Federal Housing Administration shortly after 1952 encouraged builders to pioneer and build lower cost housing and this project --

374] Mr. Raper: I think, Your Honor, this witness has gone far enough. He is volunteering a lot of answers to questions that is not quite proper.

The Court: I believe so.

Mr. Hickey: That's all, you may examine.

Cross-Examination by Mr. Raper:

Q. Mr. Dellinger, I would like to hand you here Plaintiff's Exhibit No. 6 and ask you to examine that and tell me what those two deeds are. A. This first deed, Mr. Raper, is a warranty deed from the Arps to Atlantis Investment Company covering 20 -- Lots 5 through 24 both inclusive, which I believe you will find are twenty twenty-five foot lots in Block 12.

Q. All right, sir, now there are some revenue stamps on there. Do you see what the value of those revenue stamps -- now you are acquainted with those values, aren't you? How much they cost?

375] Mr. Hickey: We object to that on the grounds that there is no showing that they were put on by this gentleman.

Mr. Raper: I don't think that makes any difference. They are there.

The Court: Well I'll --

Mr. Hickey: He can testify as to what he paid, Your Honor, but I don't know that he can draw conclusions from the revenue stamps he didn't put on.

The Court: He can be asked to consider the question and see - -

Q. Now do you know what the consideration was for that first deed? A. I would say $5,000.

Q. All right, sir. Now take the deed that's attached to it and explain what that deed is. A. I believe that this is a deed that -- and explaining it -- that this deed was given to me for the consideration of $5,000 for the twenty -- as I explained, twenty twenty-five foot lots, according to the contract I had with Mr. Arp at $250.00 a lot. This deed was recorded and I had obtained FHA commitments and had actually started construction on eight houses on these twenty twenty-five foot lots.

Q. They are located in this area under the old plat, is that right? A. Under the old platting, that's right, sir.

Q. All right, sir. Now go ahead. A. A little later
376] date it became obvious that to use the land immediately west of it that it would be necessary to replat the other half of this same block and part or all of Block 11. I had already -- or rather, the First National Bank of Colorado Springs had already placed deeds of trust in the amount, I believe, of $7,000 on each of these sites -- the Federal Housing Administration had issued commitments to insure loans and the houses had actually, construction had actually started at this point. In my negotiation with the City of Cheyenne in replatting that, they requested that we also replat the east half of Block 12, which I already had houses on, had deeds of trust on, on the old deed. Now I believe that the reason that I have a second deed on it -- in fact I know that, because in conferring with the bank in relation to deeds of trust already on a certain legal

description, and coming up with a new plat including that same piece of ground, that this second deed then would naturally have a legal description in relation to the amended plat or the replat rather than coincide with the first one.

Q. Well, did it cover part of the same lots on the first deed? A. No, sir, I don't believe it did. I didn't examine it. I am sure this deed that cost $5,000 -- this deed covers to the best of my knowledge, would cover the balance of the replat, which constituted seventeen building sites.

Q. That second deed then would be this part down in
377] here (indicating)? A. Would be the very last part.

Q. That would be the part right under this street, Van Tassell Court, is that right? A. Right there. You don't have -- a part of it would be the blank part where the red line comes across.

Q. Here? A. No.

Q. Here (indicating)? A. No, on down the other direction just a little way, where the red line --

Q. You better come and point that out. A. Well, here (indicating), I believe this is Block 11, that it covers five lots here and five lots there and seven lots there. It did not take in this half of this block (indicating). That's on the first deed.

Q. Oh, that is on the first deed? A. That's right.

Q. All right, I think we have got that just about cleared up. Now what are the stamps shown on that second deed?

A. Well, I'm not exactly sure what they are supposed to be on it. However, I didn't put them on here. A ten dollar stamp and a two dollar one -- and I don't know whether it is ten dollars or ten cent one, the small one.

Q. It's ten cents. A. Well, that would indicate there
378] was $12.10 worth of deeds.

Q. That would amount to what? $11,000?

A. I don't know, I thought it was a dollar a thousand.

Mr. Hickey: I object to that.

The Court: Just a minute. You object on the ground -- I think it's proper cross-examination.

Q. All right, sir, now doesn't that amount -- or wouldn't that represent a consideration of $11,000? A. Well, if my

conception of the revenue stamps at a dollar a thousand -- it would represent $12,000.

Q. All right, that's close enough. Then by adding the stamps on both these deeds together, you do end up with $17,000 or $18,000? A. $17,000.

Q. All right. Now I'm not so much concerned about that, Mr. Dellinger. I just wanted it cleared up for the benefit of the Jury. It doesn't necessarily mean anything --

Mr Hickey: I object to counsel testifying.

The Court: Well, that may be stricken. That will be up to the Jury.

Q. Now, Mr. Dellinger, do you recall Mr. Soloman's testimony where he said that there were eight acres in this small piece of ground here? A. Approximately eight. It was seven acres and a fraction, I believe.

379 Q. All right, sir. Now do you recall that he testified in this adjoining area here were about seven acres? Do you recall that? A. I believe -- believe so.

Q. All right. Now when you take those acreages and divide them into the total amount that you actually paid for both of those pieces of ground -- or either one of them as a matter of fact -- doesn't that come out to around $2200 to $2400 per acre? A. In taking the whole area, total consideration of $35,000, that's right. But Mr. Soloman didn't do that.

Q. Well now, you just answer my question. Don't you recall that he placed a purchase value -- or a purchase price on this first portion here of $2,250? Do you recall that? A. Yes, sir.

Q. All right, sir. And do you recall his placing a purchase price on here (indicating) of $2,429? Do you recall that? A. No, sir. As I saw the area that you designated, my conception of his testimony was the other way around. That first area, this area (indicating) is the one he had $2200 per acre and this area (indicating) was the $2400 area.

Q. Yes. They are within that range, they were from $2200 to $2400, isn't that right? A. Right.

Q. All right, now if he had taken a -- is that actually about what you did pay for it. A. It's about what I paid for it in the way that Mr. Soloman testified. The way it

was actually shown in the sales, I think that the last purchase was in excess of $2400 an acre.

Q. And how much an acre? A. At least $400 an acre.

380] Q. At least $400 an acre?

A. Well, approximately $400 an acre. My contention is it was not less than $2800 an acre for the last purchase.

Q. Well now, this $2,250 figure, you have no argument with that? A. Well, I do have argument with it. My calculation was it was approximately twenty-four hundred dollars an acre.

Q. Well, it's somewhere in that range. Now you didn't pay any $2800 an acre for that land in there, did you?

A. I believe I did, the last purchase.

Q. That last purchase, and that's your opinion then --

A. Yes, sir.

Q. That the consideration was actually $2800 per acre rather than $2429 per acre. All right, sir, I don't think I have any other questions. Thank you, Mr. Dellinger.

Mr Hickey: That's all. Thank you, Mr. Dellinger. Could Mr. Dellinger be permanently excused, Mr. Raper? Do you have any objection to permanently excusing him?

Mr. Raper: No, none at all.

The Court: You may be excused.

381]

EUGENE G. BOWES, called as a witness on behalf of the Defendants in rebuttal, testified:

Direct Examination by Mr. Hickey:

Q. Mr. Bowes, you are the same Mr. Bowes who was on the stand the other day? A. I am.

Q. And you are reminded that you are under oath at this time. A. Yes, sir.

Q. The other day I don't recall asking you about how long you had actually been in the business you are now in. How long have you been so -- A. I have been in the appraisal business since about 1938, eighteen years.

Mr. Raper: I think probably, Your Honor, this witness has already qualified.

The Court: Well, on rebuttal I suppose if additional qualification is necessary it may be done.

Q. Now you have been sitting in Court all during this trial at the counsel table where you could hear well?

A. I have, sir.

Q. And you are acquainted with Mr. Soloman?

A. Yes, I've known Mr. Soloman before.

Q. You are both members of the same organizations and you have known him for some years? A. Yes, sir.

Q. Now in your appraisal it was apparent to me that
382] you did not use the sale from Mr. Leisher to Mr. Black which was used by Mr. Soloman in this particular area, is that correct? A. That's correct.

Q. Why didn't you use that sale? A. Well, that sale took place approximately twenty-nine months before August 25, 1955 and I had at hand fourteen other sales which were more recent and more comparable, for one reason. Second, it was suggested by Mr. Black that his purchase of that land from Mr. Leisher was at a bargain price.

Q. Now, I notice further that in the course of your appraisal you did not use what was called the Rose Ella Addition of Mr. Milt Nation's, which would be down in this portion somewhere from the Exhibit K. Why did you not use that? A. I don't consider that comparable to the subject, principally because of its distance from the subject and its immediate proximity to U. S. Highway 85/87 and the commercial uses on that highway and the uneven terrain.

Q. I hand you herewith what has been designated Defendant's Exhibit E, which is an aerial photo. I wonder if you could take a pencil and mark around the Rose Ella Addition and use it in your explanation to the Court and Jury. A. This is approximately it (drawing). This photograph shows the beginning of Rose Ella Addition to be approximately a hundred -- begin approximately a hundred feet east of U. S. Highway 85/87. It extends to the north, is slightly uneven at its northerly. Immediately north of that and to the east is a sharp drop off in terrain which I would judge to be, oh, ninety to a hundred feet in depth. It might be helpful if the Jury could look at this.

383] Q. You may show it to the Jury if you can point to it.

A. This is the Rose Ella Acres Subdivision approximately, U. S. 85/87 (indicating), the subject is over here, this is the Leisher-Black Subdivision. There is a hill in between,

you can't see Leisher-Black, and a deep fall-off in terrain I have referred to is right here (indicating). This is a night club and there are other commercial uses along 85.

Q. Now then, you did not take into consideration what Mr. Soloman designated as the third sale, which I think is a portion of your second sale. Can you tell us why you didn't take that into consideration? A. Well, my investigation of sales did not disclose that third transfer to Mr. Dellinger, or to Atlantis Corporation. I'm very sorry it didn't, not because it might have changed my conclusion at all, but because it further would document the fact that the subject land was growing more and more valuable during this first development period. It's further documentation of that conclusion.

Q. Now then, your sales No. 1 and 2, I think, are generally the sales A and B considered by Mr. Soloman, and there is some difference in opinion as to the value of those. Could you explain to the Court and Jury why that difference exists? A. Yes. Mr. Soloman didn't treat his difference in time as far as that sale is concerned specifically.
384| My procedure with each sale was to compare each specifically to the subject property, not to another sale, but to the subject property, adjusting first for any conditions of topography, conditions of annexation if they were a factor, third, specifically for the difference in value as to date of sale, adjusting each up to the date --

The Court: Will counsel come to the bench?

(At Bench:)

Mr. Raper: I think, Your Honor, this has all been --

The Court: I think this is a basis for Mr. Soloman to come back and define his basis.

Mr. Hickey: This is the last question.

The Court: That's what I was going to see. I think that was all right so far, but you are getting beyond rebuttal, and you should hold that to a minimum, or I'm going to sustain the objection.

(To Jury:)

Mr. Hickey: That's all, you may inquire.

Cross-Examination by Mr. Raper:

Q. Mr. Bowes, how many of your comparables were acreage sales? A. Two.

Q. How many of your comparable sales were sales of lots with houses on them? A. Let me see. Ten.

385] Q. And what were the other two? A. Sale No. 8 was of vacant land and Sale no. 7 was of vacant land.

Q. Vacant lots? A. Vacant lots, that's right.

Q. Two vacant lots. Then the preponderance of your comparables were either taken from records which reflect a consumer purchase, that is, the person who finally moves into a house and lives there, isn't that right? A. Correct.

Q. Does the placing of a house on a lot increase the value of the lot? A. No, sir.

Q. None at all? A. No, sir.

Q. Why not? A. The -- the value of a parcel of land is what it will produce in sale if properly used. The value of improvements cannot -- with few exceptions -- exceed their cost. They could be replaced tomorrow on another vacant lot across the street at the same cost. Consequently the sale of the total, the value of the total as indicated by market sales with dwellings on the lands indicates, taking away the actual cost of the improvement, any profits that may be deserved, indicates the value of the land, and that was the value of the land before the dwelling was placed on that parcel.

Q. Then in your opinion the placing of a house on a
386] lot does not increase the value of it --

A. That's correct.

Q. Of the land at all. A. That's correct.

Mr. Raper: I'd like to beg the Court's indulgence. I wonder if we could take a recess about five minutes, I will straighten out something in my own mind.

The Court: Will counsel come to the bench.

(At Bench:)

The Court: It seems to me you, too, Mr. Raper, are getting beyond the scope of rebuttal testimony. You are

going right back to cross-examination on previous matters. This does not relate to the three modifications or correction of them, that he directed to the expert's testimony,and I shut him off. You are opening up a new thing here that seems immaterial to me because they will come back and redirect on that, and we are getting back to the case in chief.

Mr. Raper: I think you are right. That's the problem in rebuttal, it is argument.

The Court: It is argument, and it seems to me you are getting afield like Mr. Hickey was. Don't you think you could conclude?

387] Mr. Raper: I wonder if I could have a five minute recess, I may want to ask Mr. Dellinger another question. I may ask the Court to do that if it seems advisable, because I would like to have one thing cleared up to my satisfaction.

Mr. Gray: You mean surrebuttal?

Mr. Raper: No, I would like to recall Mr. Dellinger.

* * * * *

Mr. Raper: I would like to have Mr. Dellinger recalled for further cross-examination.

Mr. Hickey: Your Honor, we close our case.

The Court: Well, Mr. Dellinger may be recalled.

Mr. Raper: All right, sir, thank you.

The Court: Limit your examination, Mr. Raper.

Mr. Raper: Yes, sir, I will.

The Court: His last appearance.

Mr. Hickey: We will put an objection in the record.

388] The Court: Very well. That is, I am giving that leave assuming Mr. Dellinger has not left.

* * * * *

GAYLE DELLINGER, Called as a witness on behalf of Defendants in rebuttal, resumed the witness stand and testified:

Cross-Examination (Continued) by Mr. Raper:

Q. You are the same Mr. Dellinger who was testifying previously in this case? A. Yes, sir, I am.

(Government's Exhibit No. 11 was marked for identification.)

Q. Now, Mr. Dellinger, would you come to this map at the board, please, Plaintiff's Exhibit No. 2. Now remove this thumb tack which has the little C over the top of it, and I will ask you to state what portions of that area are covered by which of these deeds, please, Plaintiff's Exhibit No. 6. A. I believe that this first deed, this Lot 5 through 24, both inclusive, in Block 12, would be all of the east half of Block 12 with the exception of four 25-foot lots on the north end.

Q. All right, sir. Now that then is only the east half of Block 12 less those few blocks? A. Yes, sir, less those lots on the north there that are not included in this.

389] Q. All right, sir. How much did you pay to Mr. Arp for that half block of lots? A. $5,000, for the part represented on the deed.

Q. All right, now will you explain what the other deed covers? A. It would be rather difficult, Mr. Raper, without a plat to tell you definitely what these covered.

Q. All right, I'll hand you here the Plaintiff's Exhibit No. 7. A. All right, I believe that this deed covered -- not on the same plat that the previous deed covered, but as the replat.

Q. All right, sir. A. That it covered the lots represented in the west half of Block 12 on the replat, as well as -- that is, this portion of Block 12 as well as this and this portion of Block 11 (indicating) would be represented

on the second deed. That is my understanding.

Q. All right, sir. Then the second deed represents the west half of Block 12, doesn't it? A. The portion south of Van Tassell Court.

Q. All right, sir. The west half of Block 12 and all of Block 11, south of Van Tassell Court, is that right?

A. I believe that's right. I think that's right.

Q. All right, sir. Now now much did you pay to Mr. Arp for the west half of Block 12 and all of Block 11 below Van Tassell Court? A. $12,000.

Q. $12,000 then and $5,000 is $17,000, isn't it?

390] A. Represented on the two deeds.

Q. Yes, that's right. A. That's right.

Q. All right, then this entire area here covered by this little colored portion is $17,000, isn't it?

A. That's right.

Q. All right. You can take the witness stand.

Mr. Raper: No further questions.

Redirect Examination by Mr. Hickey:

Q. How much did you pay per acre for the last sale you have in mind? A. According to my calculations, the last sale that I have in mind, approximately $2800 to $2900.

Q. And that is a fact as to what you paid?

A. Yes, sir.

Mr. Hickey: That's all.

Re-Cross Examination by Mr. Raper:

Q. Just a moment, please, Mr. Dellinger. Is there any portion of this area in here, B and C, which was not included specifically in your original agreement with Mr. Arp?

Mr. Hickey: I object to the question on the grounds that the agreements are in evidence, the maps are in evidence and they are the best evidence of what the agreement includes.

The Court: I think we may be running into something interminable if we keep coming back and forth. I will permit this answer.

391] Mr. Raper: All right, sir, that's the last one I have unless the answer requires another question.

The Court: Well, that's always the case. Only one more.

Mr. Raper: All right,sir.

Mr. Hickey: I object to the continuation of examination by counsel.

The Court: Overruled.

A. The east half -- the west half of Block 11 was not included in the original contract.

Q. All right, sir, then when you consummated your purchase of all of this south part of Block 11, that was a compromise or a new agreement, isn't that right?

Mr. Hickey: I object on the ground it's been asked and answered.

The Court: I think we have gone into this repeatedly. The objection is sustained.

Mr. Raper: Thank you. No further questions.

Mr. Hickey: We have no further questions.

Mr. Hickey: As far as I know, Your Honor, the case is concluded as to the oral testimony that will be submitted by the defendants.

The Court: The Government rests?

392] Mr. Raper: Government rests.

The Court: Very well. I think that we will save time by coming into chambers and working out the details of the inspection and one or two matters of law that I have in mind, in order that the record should be made clear.

* * * * *

393] (In Chambers:)

(Government's Exhibit No. 12 was marked for identification.)

The Court: Gentlemen, the record may show that we are meeting out of the presence of the Jury in chambers and that counsel for the Government, and the defendants Arps are present. Reference is made to the matter in the record with reference to the Children's Hospital Association. I thought that record should be completed by placing of record Government's Exhibit 12, which is a letter from the United States Attorney to the Children's Hospital association under date of June 26, 1956, advising that association of the trial setting of this cause for July 10, 1956, at 10 o'clock A.M.

Mr. Raper, I take it that the original of this letter was sent on or about the date the copy bears in the usual course of your office practice?

Mr. Raper: Yes, sir.

The Court: To the addressee?

Mr. Raper: Right, sir.

The Court: And a copy to Hodges, Silverstein, Hodges and Harrington?

Mr. Raper: Right, sir.

The Court: I may further indicate for the record; that on Wednesday, July 11, 1956, as I recall, at or near during the noon hour I telephoned Mr. Walter Hodges, one of the members of the Denver firm noted on a copy of Exhibit 12, and called his attention to the fact that this case
394] was in progress and that while a formal notice of trial had not been sent to him by the Clerk, as far as disclosed by the file, nevertheless there had been exhibited to me by the United States Attorney a copy of a letter purporting to give notice to Children's Hospital and his firm. He indicated that his brother -- as I recall his name was Joseph -- had been paying more attention to this matter, but that he felt quite confident that they knew of the setting

and did not desire to make an appearance for the Children's Hospital Association. He said that he would, however, immediately check to see if the Children's Hospital did want to be heard or make any contentions here at all, and if they did, he would notify me by the next morning, which would be by Thursday morning, as I remember. The record should further show that I have received no further communication from Mr. Hodges.

Now passing to the question of this inspection, is it your practice here, gentlemen, to have the Marshal sworn to take custody of the Jury?

Mr. Raper: I don't know what the practice is, myself.

Mr. Gray: Our statute provides that the Court shall select a person to accompany--

The Court: Well, what I would propose to do would be in open court to designate the Marshal, if it is agreeable with him to have charge of the Jury. We will have to work out the details of transportation. Perhaps a deputy or perhaps our bailiff, if he can drive the car. It will require two cars.

395 Mr. Raper: The Marshal has three cars here today he can use, sir.

The Court: He does? Well, maybe we can get his deputy to drive one and he can drive the other.

Mr. McFeely: He has heard of this and I think he had them standing by.

The Court: Yes. I think we should swear both the Marshals not to suffer anyone to communicate with them, or communicate with them except by order of the Court. Then I am going to ask you gentlemen to accompany me and we will go out there with a general understanding where they are to be taken and out of the presence will instruct the Marshal as to what points the Jury is going to be taken -- and if that's agreeable with all of you -- or I am going to let them go out in the general vicinity, and we will have a reporter there so that any discussion to the Marshal as to

pointing out the area or the boundary or any other areas can be made a matter of record. That is the way I propose it, and without discussion on the part of counsel or by the Court, simply the Van Tassell Housing Project pointed out, the boundaries in general pointed out as represented by the flags. If you gentlemen agree further, the other portions of that immediate development, and if you agree further, the other areas involved in the evidence. If not, we will limit it to the Van Tassell Housing project. What is your view?

396] Mr. Gray: We would have no objection, Your Honor, to viewing the subject premises, the Atlantis development and Leisher-Black, but we would object to including Rose Ella Addition.

Mr. Raper: It is all in evidence.

The Court: Well, can all of this area -- the general location be seen from the subject property?

Mr. Raper: No, sir.

The Court: On all of these areas?

Mr. Raper: No, sir.

Mr. Hickey: Rose Ella is the only one that can't.

Mr. Raper: Neither can Black.

Mr. Gray: Yes, it can, if you get down below there.

Mr. Raper: No, sir, because I have been out there and looked.

Mr. Hickey: Mr. Gray was out there this morning.

Mr. Raper: You have got to go up on that hill to the South in order to see Black.

Mr. Gray: Well, that's when you talk about the subject property, no, but the road goes right on by.

Mr. Raper: And then you can go right on by down to Rose Ella.

397 Mr. Hickey: Well, but you have to come out on the highway and back to 85.

Mr. Raper: Not if you go to Black's. You stay on the same road.

The Court: Can you see Black's from the highway?

Mr Raper: No, sir.

Mr. Gray: No. You can from Snyder Avenue if you go on up Snyder to Fox Farm Road.

Mr. Raper: Well, I would want all of them to be viewed if any of them are viewed. And here is another thing, Your Honor. You can't view Van Tassell without viewing the Interior Heights development made by Mr. Dellinger, and so it looks to me as though it is inevitable that we have got to view all of them, and I can suggest a route to the area that will take us past all of them.

The Court: Your idea would be not to go over these others except Van Tassell, but to simply have the Marshal at the instruction of the Court point out the area, is that right?

Mr. Raper: Right, sir.

The Court: And the Jury collectively could view that area from a distance on these other areas?

Mr. Raper: Drive right up to them. It's kind of hard to see that Rose Ella Addition unless you drive right into it. As you may note from the map, it is narrow, and unless you take a turn and go into the subdivision, it would be quite difficult to --

398 The Court: Can't you go to the highest part of the subdivision?

Mr. Raper: Yes, you could go to the first intersection

inside the subdivision and turn around.

The Court: I don't think it will help the Jury at all to examine any of these other areas in detail or even the subject property. I think the main thing is to see their general location with reference to the city and the entire area, and I would be inclined to instruct the Jury that their view is for the purpose of enabling them better to understand the evidence and is not to be considered as evidence in and of itself. If there is any objection to that instruction, I would hesitate to have them out there. I think the condition has changed so that they would have to hark back to the evidence and simply have the view as a general means to enable them better to understand the evidence. Is that your view of the law, gentlemen? That the view is not evidence in and of itself.

Mr. Gray: I think that's right, sir.

The Court: Is that your view of the law?

Mr. Raper: It's been my understanding that the courts recognize the view of the premises as --

The Court: I wouldn't permit the inspection if it were evidence because the conditions have changed so much that I think it might be misleading if I have to instruct the Jury that their view is evidence, and I am not going to permit an inspection.

399] Mr. Raper: Well, I think they should be instructed that conditions have changed since that time.

The Court: Well, I am not only going to instruct that, but if I permit a view I am going to put a condition that the view is not evidence but they have been permitted to have that view in order that they may better understand it in open court.

Mr. Raper: That would be a lot of evidence, to introduce all that ground.

The Court: You bet it would.

Mr. Hickey: Well, John, my understanding is that there

have been no improvements in the two weeks preceding trial.

Mr. Raper: Yes, that's right.

Mr. Hickey: Or that they were going to change the appearance.

Mr Raper: No. As I understand it, the roofs on this Van Tassell Terrace might be in the course of getting swabbed right now.

The Court: I can't see how that would have any bearing in view of the evidence, if we tell them it is merely for them to understand the evidence, or original evidence.

Mr. McFeely: Actually they are supposed to ignore the improvements anyway.

400] Mr. Gray: That's what bothers me about this view, Your Honor, is the ability of that Jury to visualize that land with those buildings off of there. Now the Housing people, so far as those improvements are concerned, are rather proud of them, I guess. But now we're certainly apprehensive about the ability of this Jury in their mind to take those buildings off of there and not have that value of that land affected by the overall view of that housing.

The Court: Don't you suppose that they might be in a better position to do that if they know what you know about the land and when they talk about the improvements and disregarding those, whether they are good or bad, if you both see it and the Jury knows you have seen it and you can argue.

Mr Gray: Yes. I say we are apprehensive about it, but at the same time, I think that probably the Jury should see it.

The Court: It seems to me that it might be helpful but it bothers me to get into a mass of detail out on these other areas, except just to have them see the general --

Mr. Hickey: Pass by.

The Court: The general area and know the location, because we haven't followed up detail as to the subsequent improvements on the development.

Mr. Gray: Well now, let me make one more observation here, and then I'll quit, Your Honor.

401] The Court: All right.

Mr. Gray: But it would be simple, so far as the Atlantis development is concerned and Leisher-Black is concerned -- a drive through there would be very, very simple and there would be nothing there affecting anything. But to go into Rose Ella Addition -- if you just go into the front you do not see that 75, 80 or 90 foot drop-off down into Crow Creek that backs up against Rose Ella Addition. Now if they are going to view Rose Ella Addition, they ought to view that.

The Court: Do they drive down past there?

Mr. Raper: Yes, sir. I know just the route they can take.

The Court: Let's do this, gentlemen, let's have the arrangement that Court and counsel and reporter go in the lead car. We will go to the subject area first, as far as you can agree on the route, you can agree we will lead out. When we enter the subject area I will direct the Marshal to point out to the Jury that we are at the subject area and that the flags mark the boundaries. I'll try to get you gentlemen to agree upon the route through the subject area and from there on to each new area that we come to we will stop at the edge of it and simply tell the Marshal to tell them that that is the designated area and we will go to all of the areas that you mentioned and we will have the rule include this drop-off on the Rose Ella area. And then should we go to town -- I don't suppose it is too important. If It's not convenient -- we will do whatever is the most convenient thing. The only comment will be to designate the area without any further designation, if that's agreeable with you gentlemen, except for the subject area where the Jury will be told that the flags represent the boundaries.

402] Mr. Hickey: I presume the most direct route would be to go there first on Snyder and then straight north.

Mr.Raper: May I get a map, Your Honor?

The Court: Yes.

(Mr. Raper left the Court's chambers.)

Mr. Hickey: Of course, I'll tell you, in my frank opinion, this quibbling about where we go and how we go, I think is nonsense. I think that jury has got their mind made up right now, as well as it would be made up, and this is just a bother.

The Court: Well, the same sort of nonsense for you to argue the case --

Mr Hickey: Well, Judge, sometimes I think that's right, I would concur with the court.

(Mr. Raper returned to the Court's chambers.)

Mr. Raper: Now I have this map here --

The Court: But you won't waive your argument, I am sure.

Mr. Raper: Here we are, right now. City Hall, Post Office --

403] The Court: I take it this can be off the record.

Mr. Gray: Yes, I think so.

Mr. Raper: All right.

(Off the record discussion.)

(In Open Court:)

The Court: Ladies and gentlemen, the Court has directed a view of the areas involved in the elements in this case. I'm going to place you in charge of three Marshals who will

drive the cars from which you will view the areas. Counsel will accompany the Court and the reporter in the lead car. The particular areas which have been referred to in the evidence by counsel will be designated to you through the Marshal, unless the Court and counsel otherwise agree. There seems no necessity of your walking over the areas. You probably can get a sufficient idea of the general location of the terrain from the car, and the Court and counsel in the lead car will determine the route.

Now you are being permitted to inspect these areas not to furnish evidence in the case, because you are to decide the case on the evidence received in open court. The purpose of the inspection is merely to permit you better to understand the testimony which has been received, and you must bear in mind in considering a view the changes which the evidence has indicated have been made, and there are obvious changes, because otherwise you might be misled.

404] What I have said about not conversing about the case applies to your conduct during the view. It may be that some of you would naturally like to discuss certain matters, but that would be out of place. You make your own views. The Marshal will be directed to make any communication upon which the Court and counsel agree or which the Court directs. I am going to swear the Marshals to have charge of the Jury.

Do you have a form of oath?

Clerk: Just for the trial.

The Court: I will have to formulate the oath.

Do you solemnly swear, gentlemen, that you will take charge of this Jury and conduct them in a body, but of necessity in three separate conveyances under your charge, to the place which shall be shown to you by the Court accompanied by counsel and that during the absence of the Jury on this inspection, while in your charge, you shall suffer no person to communicate to the Jury or member thereof, other than yourselves upon express direction of the Court, during the inspection, and that you will not communicate with any jurors except upon express direction of the Court, of which a record will be made when we arrive at the site, and that upon the completion of the inspection you will return the Jury back to the Courtroom, so help you God?

Marshals Riley, Wilcox and Henson: I do.

The Court: Do you gentlemen have any other sugestions
405] for direction at this time on inspection of the Jury?

Mr. Raper: Government has none, Your Honor.

Mr Hickey: We have none, Your Honor.

The Court: I understand that the Marshal has three cars available, sir.

Marshal Riley: That's right, Your Honor.

The Court: All right, we will stand in recess then until the inspection will have been completed.

(At first corner:)

The Court: You may tell the Jury, Mr. Marshal, that the flag, the red flag indicates a corner of the project and we are now about to enter the project, and until we stop the automobile again and further word is brought to them, we will be driving through the so-called Van Tassell project.

Any other items you gentlemen have in mind? All right.

(At next stop:)

The Court: You may tell the Jury that this red flag represents the southeast boundary or southeast corner of the Van Tassell housing project. Any other flags which we pass will represent the boundary and when we leave the project we will stop again.

(At next stop:)

The Court: You may tell them that this flag by the telephone pole represents the westerly boundary and we are now going to follow along the westerly boundary as we go north. The other flag down in the corner which they obviously saw represents a jog in the westerly boundary.

406] (At next stop:)

The Court: You may tell the Jury that the flag which you saw there represents the northwest corner of Van Tassell project, the subject lands we have referred to.

Oh, wait a minute. Now are we entering this other --

Mr. Raper: Yes, sir.

The Court: What is the --

Mr. Raper: The Interior Heights project or the Dellinger or Atlantis development.

Mr. Hickey: The Dellinger will probably identify it.

The Court: The Dellinger lands, shall we call them, or Dellinger project. Are we going to distinguish -- I think that's sufficient.

You may also tell them we are leaving the Van Tassell housing project, that being the northwest corner of it, and going onto and through the Dellinger lands.

(Marshal Riley returned to the lead car.)

Marshal Riley: One of the Jurors asked a question and would like to know if the route we just followed here on the west side is the buffer project that was referred to or the lots in the testimony.

Mr. Raper: Well, it is, but I don't know what the Judge wants to tell them.

407] The Court: Do you gentlemen have any --

Marshal Riley: One juror raised the question.

The Court: I think it would be more preferable to omit questions, and you gentlemen can point it out in argument. One can say it was a buffer and the other can say it was not.

If they ask any questions, just tell them there won't

be any questions answered.

My view-point is not to invite questions and let you gentlemen handle it in the argument.

Mr. Raper: Yes, I'm agreeable to that.

Mr. Gray: I think that's right.

The Court: All right. You simply tell them that the purpose of this view is not for the answering of questions.

(At next stop:)

The Court: We are leaving the Dellinger lands now and proceeding along Fox Farm Road.

Mr. Raper: Could I suggest that the next subdivision that we come to will be Leisher-Black and then we can drive through it.

The Court: We will have to stop again before we enter Leisher-Black. Can't we tell them when we get there?

Mr. Raper: That will be all right.

The Court: They might assume this is Leisher-Black before we get there.

(At next stop:)

408| The Court: We are at the northwest corner of the Leisher-Black area and we will drive through that area now.

(At next stop:)

The Court: We have left Leisher Black area now.

(At next stop:)

The Court: We are entering the Rose Ella area on this other part.

(At next stop:)

The Court: We are leaving Rose Ella and we are returning to the Court House.

(The Court and Jury returned to the Courtroom at 12:12 P. M.)

The Court: The record may show the Jury is in the box and counsel are present. Mr. Marshal, was the inspection conducted in accordance with the instructions of the Court?

Marshal Riley: It was, Your Honor.

The Court: One further matter of law, ladies and gentlemen, which must be taken care of before the case is argued to you. We will therefore excuse you now till this afternoon at two o'clock. Remember the admonition the Court has heretofore given you. Upon your return the case will be argued and you will be instructed and the case will be given to you for your verdict. We will stand in recess until two o'clock. I will ask counsel to come to chambers.

(In Chambers:)

The Court: First, as to the Government's request, the form, I shall give the form as requested.

2 is given substantially as requested.

3 will be given, I think I may use the term "money" or its equivalent, instead of cash, but it will be given in substance.

Mr. Hickey: That's 2?

The Court: 3. The concept in 4 will be given, not necessarily in that form.

Mr. Hickey: We object to 4 as it is written.

The Court: Your objection may be noted and it will be deemed to go to the instruction as I will give it with that concept in but in my words.

I will give the idea of No. 5 in substance. I think I followed more your form on highest and best use, Mr. Hickey and Mr. Gray, but I also will instruct the Jury that speculative uses should not be considered. I won't use this exact form on that, but the idea will be there.

No. 6 I will give in substance.

No. 7 in substance.

Mr. Hickey: We object to that, Your Honor.

Mr. Raper: Are you looking at 6?

Mr. Hickey: 7.

The Court: You have an objection.

410] Mr. Hickey: Yes.

Mr. Raper: The fact that the owner may be unwilling to sell may have no bearing on the --

The Court: On what theory do you think that does not belong?

Mr. Hickey: I don't think it is complete, Your Honor. I think that the fact that the owner may be -- the fact that the owner may be unwilling to sell is only half of it. I think that the instruction, as long as it has got this language of fair market value in it, it should also be more complete by saying that in a condemnation case where the Federal Government is the taker and the owner is the seller, the matter of a willing seller has no bearing and the matter of a -- what do you call the buyer under the just compensation rule -- a buyer ready, willing and able. I object to it -- it seems to me this is half a rule.

The Court: Well, do you think the standard of a seller willing to sell and a buyer willing to buy but under no compulsion does not apply in a condemnation case?

Mr. Hickey: As between the Government and the seller I don't think it applies. If you are instructing here the

fact that the owner may be unwilling to sell has no bearing on the matter of determining just compensation.

The Court: I see your point. In other words, as an abstract rule where it might be applied --

411 Mr. Hickey: Out of context.

The Court: Out of context with the true rule, it might be misleading. I think that the concept is all right. I will try to present it in context that won't be misleading. If you still feel it is objectionable, you can take exception.

Mr. Raper: But substantially this rule will be given, the unwillingness --

The Court: I will give the idea that the right to condemn does not involve -- it is immaterial that the defendant may be unwilling to sell. On the other hand, I will mention in that connection certain other matters which I think are immaterial.

Mr. Raper: Just as long as the unwillingness to sell is clearly eliminated from their consideration.

The Court: No. 8, I will give that idea but in different words. I'm going to mention several things that are not determinative and then come to the real issue in the case.

I will give 9. I won't repeat or overemphasize, or I will try not to, but the concept of 9 will be given.

Mr. Gray: In connection with that 9, Your Honor, when property is taken, the owner is not entitled to compensation for any gain he might have hoped to realize over and above the fair market value.

In that connection, in view of the fact that the Arp
412 position is in evidence, I think we should have an instruction to the effect that neither can the Government confiscate the personal --

The Court: I am going to give that instruction. I am

going to comment upon that and call attention to the fact that if one makes an advantageous deal that doesn't mean that when the land is condemned it should be condemned for anything less than its fair market value before condemnation.

Mr.Hickey: That's that Olson case.

Mr. Gray: Yes, that's the Olson case.

The Court: I'm going to give No. 10 in substance.

Mr. Hickey: Let's see. I think I have got to object on 10. Let me look a minute. I object to that in this case. I don't know that there is any evidence of any peculiar value to the condemnor in the case, and certainly the facts known to us which of course are not known to the Jury would make this prejudicial to our case. What I'm getting at is this. The Government is taking this and it is known to all parties for the purpose of resale. Now I don't think that that is any peculiar -- is evidence of any peculiar value to the condemnor.

Mr.McFeely: You would like to suggest that the Government is taking this to protect the Government's investment.

Mr. Raper: Well, there was an attempt to show -- by the defendants here, to show that the Government was going to sell it in the cross-examination of Smalley.

413] Mr. Gray: It is in evidence and that's very definitely where that applied.

The Court: Well, I am going to instruct the Jury that value peculiar to the Government is distinguished from fair market value, but that in connection with a number of other matters in a form that I believe will not overemphasize that idea. Your exception may be deemed made to the instruction as I will give it, however.

Mr. Gray: Your Honor, may I inquire, will you instruct separately, or do you just go --

The Court: No.

Mr. Gray: So that when we come to the bench --

The Court: You come to the bench. I am going to give you the benefit of these exceptions you are taking now and if you will just incorporate those by reference, if there are any such matters you desire to call attention to, dependent upon the form of my particular instruction or the substance of it, different from your understanding now, you may do so.

Mr. Gray: All right.

The Court: I am going to give in substance Government's proposed Instruction 11 except the last paragraph.

Mr. Hickey: Well, that's what I objected to. This is something which --

The Court: It is argumentative, I think, the last paragraph.

Mr. Hickey: I had objected to that.

Mr. Gray: Further that it is cumulative, Your Honor.

The Court: Oh, I'm going to try to avoid repetition. When I say I am going to give these in substance I am certainly not going to repeat the same concept if I can avoid it.

I am going to give that idea. There is no severance damage here shown.

13, I am going to give 13 substantially as requested.

The Defendant's No. 1, I am going to give 1 in substance, but I may say specifically that I believe I covered the idea in No. 1 down to about the middle of the page where it says, "The law has no accurate standard," I am going to insert in lieu of that expression "no exact formula." I think the law does have an accurate standard, which is the concept of fair market value, but there is no definite formula, and I am going to give the substance of your instruction without repeating it, where I have got it elsewhere.

No. 2, I'm going to give that in substance, but tell

them directly the damages will be fixed as of the time of taking.

No. 3, I'm going to give No. 3 except for the phrase, "not necessarily as a measure of value." That is probably true, but it seems to me it weakens the instruction. If the value for the highest and best use is given, it is a measure in a sense of compensation.

415| Mr. Hickey: Well, I objected to that portion of it, but I felt that I was giving the instruction as quoted in the book, so I included it, and I concur in that, Judge.

The Court: No. 4 you have withdrawn.

Mr. Gray: Yes.

The Court: I will return 4 to you.

No. 5, I'm going to refuse that in part. It doesn't seem to me that I should pick out the point and say that merely by virtue of his ownership he may be presumed to have sufficient knowledge of the rents or income. Those arguments are more an appeal to the Court in admitting the evidence, which the Court always does, and I think it would be wrong for me to single out his testimony as an expert or as an owner and comment that he is presumed -- without covering it with all the witnesses, and I am going to leave out that special comment but tell them that he is authorized to testify as to value and they can consider his testimony in connection with all the other testimony as to value.

Mr. Hickey: Are you going to tell them if they want to they can disregard the testimony of all other witnesses and find on him alone?

The Court: No, no more than I can tell them they may disregard his testimony and find on the testimony of someone else.

416| Mr. Hickey: I phrased it wrong. Are you going to give the instruction if they choose to disbelieve any of the witnesses they may rely --

The Court: Tell them they can believe one witness against many witnesses and many against one.

Mr. Hickey: Well, that's it. That's the stock instruction.

The Court: Yes. At least it is my stock instruction. I eliminated another part of it, which goes on to say, "If you believe any witness has willfully testified falsely to any material matter."

Mr. Hickey: I concur in that.

The Court: Doesn't seem that we have false testimony. We may have a lot of errors in judgment, but no false testimony.

Mr. Hickey: I concur in that, Judge.

The Court: Well, that's the sum and substance. I thought I would try to simplify this for the Jury and tell them when I refer to lands I am referring to the naked or unimproved real estate, so I don't have to keep referring to unimproved real estate, and when I refer to defendants I refer to the Arps, and —

Mr. Hickey: Judge, this is something that occurred to me this morning and I would like to request an instruction on it, or something similar to it. The proper test is the similarity in character and locality of lands sold, together with the fact that the sale was not so far removed in point of time from the appropriation as to make a comparison inaccurate and impossible. The sale must have
117 been not compulsory and made on the free and open market. These figures will vary as the particular situation varies on the point of similarity and character and locality. Obviously if part of an allotment is condemned, sales, in order to be evidence of market value, should be of lots within the immediate vicinity or very close.

The Court: I would be inclined to mention those considerations as matters which the Jury should take into consideration, but I hesitate on giving that last comment because I think that is too much comment on particular evidence of appraisal.

Mr. Hickey: Well, it goes to consideration.

The Court: I have contemplated something along this line, and this will help me. I think it is adequate. In general I will add that to my instructions.

Mr. Hickey: Now, Judge, just one other question. Are you giving an instruction on experts?

The Court: Yes. I'm going to tell them along the lines we have discussed that they aren't bound to accept the testimony of any expert, that they may consider his observation, his means of knowledge in forming a judgment, and the general considerations that they may consider, just as I will tell them the general considerations they will consider in comparing values of other so-called comparable properties. And then I am going to tell them that the general rules as to witnesses in general also apply to them. I think that you have it pretty well outlined as I am going to instruct the Jury, and it is understood by the Court and by you gentlemen that the special exceptions you have taken to my intended instructions may be deemed to apply to the instructions I shall give to the extent applicable, and if there are special objections you wish to note, you may do it at the bench out of the hearing of the Jury before the Jury retires. Anything further?

418] Mr. Raper: Yes, sir, the verdict.

We, the Jury duly empanelled in the above entitled case do find that the Government has taken the land of defendants described in the complaint.

That Jury doesn't find that the Government has taken the lands.

The Court: That's superfluous. I used that because the Clerk had it in the form and I assumed that it was in accordance with the usual form. I always instruct the Jury especially as to the form of verdict and I propose in this to tell them that matter, as I have already indicated, has been determined. The land was taken at such and such a date. The only function they have is to determine the

amount of the just compensation.

Mr. Raper: Well, shouldn't that be left out of here? It doesn't properly belong here.

419| The Court: Perfectly all right with me.

Mr. Gray: What is wrong with that form?

Mr. Raper: The Jury doesn't find the land is taken. The Court finds it.

The Court: They will find it in a sense, but I think it might lead to some uncertainty. Certainly that appealed to you that it might, and let's eliminate it.

Mr. Raper: I think this form could be, "We, the Jury duly empanelled in the above entitled cause do find that the just compensation to be paid to the said defendants for the taking of the land --

The Court: Described in the complaint.

Mr. Raper: Described in the complaint for condemnation herein is blank dollars."

The Court: That's perfectly all right with me. Do you have any objection to that?

Mr. Raper: The Jury doesn't have to make any finding of taking.

The Court: You make those corrections and hand to me. Anything else?

Mr. Hickey: Not that I think of.

The Court: Forty-five minutes per side then. You said twenty minutes for opening and twenty-five for closing. Now if you will permit, my own feeling about that, whenever I get more of a closing than an opening I always felt when I was in private practice I was loading it just a little.

420| Mr. Hickey: I'd just as soon reverse it, Your Honor,

and make it twenty-five and --

The Court: I have no prejudice with the Government's position, because I was always against the Government, but nevertheless -- I should say that I was never a Government attorney, but nevertheless I do feel that on a reply when it exceeds in time the opening, it is a little unbalanced. It should either equal it or be less.

Mr. Hickey: Well, I will make it twenty-five opening and twenty closing.

Mr. Raper: Oh, I don't care. A long closing sounds to me like they are on the defensive.

The Court: I'm just expressing my view from the standpoint of the Court.

Mr. Hickey: I may not use the entire time, Your Honor. Very often I don't. I don't know that I ever used it.

The Court: Can you gentlemen keep track of the time or do you wish some indication? Your associates probably could keep you in line as well as the Court. If you run over I will call your attention to it.

Thanks very, very much for your help, gentlemen. I think this case has been very well tried and considering the heat that was generated by prior proceedings, very temperate at the trial.

421] (The Court reconvened at 2:00 P. M.)

The Court: At this time, ladies and gentlemen, the counsel for the respective parties will argue the case, as you know. The defendants having the burden of proof have the right to open the argument and thereupon the Government will present its argument and the defendants' counsel will close its argument replying to the Government. You may proceed, Mr. Hickey.

(Mr. Hickey made an argument on behalf of the defendants, Mr. Raper made an argument on behalf of the Government, and Mr. Hickey made the closing argument on behalf

of the defendants.)

The Court: Members of the Jury, the trial is about over. You have heard the evidence and there has been received all of the evidence which is considered to be helpful and proper for your consideration. You have heard the arguments of counsel. I must say that I am sure you will realize that each side has been ably represented.

Now I am to instruct you as to the law and you take the law as I give it to you for the reasons I have heretofore explained. You are the sole judges of the facts. Getting down to the case proper I want to note first that while the trial is about over, the most important part of the trial remains. That is for you to return a fair, impartial, conscientious verdict. That is what we have been aiming at all along.

422] You are instructed that pursuant to an act of Congress authorizing such action the Government of the United States, plaintiff in this case, took by virtue of its power of eminent domain on August 25, 1955, the following described lands in the city of Cheyenne, Laramie County, Wyoming, in the southwest corner of Section 6, Township 13 North, Range 66 West, 6th Principal Meridian, and it is described in the complaint as beginning at the southwest corner of Section 6, thence north 58 degrees, 35 minutes, 15 seconds east 2042.75 feet to the true point of beginning; thence north 0 degrees, 7 minutes west 300 feet to an iron pipe; thence south 89 degrees, 53 minutes west 380.44 feet to an iron pipe; thence north 0 degrees 31 minutes west 900 feet to an iron pipe; thence south 83 degrees 32 minutes east 1310.65 feet to an iron pin; thence south 0 degrees 7 minutes east 1050 feet to an iron pin; thence south 89 degrees 53 minutes west 915 feet to the true point of beginning, containing 30.89 acres of land more or less.

I think the evidence without dispute shows that area to be 30.89 acres of land, and so when the form of verdict which I will hand to you refers to the land referred to in the complaint, I have described that land and the description is not repeated in the verdict.

You are instructed that all property owned or held by

private citizens is subject to the Government's right of eminent domain. That is, the right of the government to take it for public use upon payment of just compensation to the owner. The taking of land for public purposes
423] is an essential power of the Government without which it could not discharge its responsibilities. But the payment of just compensation by the Government in such cases is not only an obligation founded upon principles of justice and fairness, but is a requirement provided by the Constitution of the United States itself, which reads in part, "that no private property may be taken for a public use without just compensation." The purpose of this trial is to determine the amount which would be just compensation to be awarded to the defendants for the taking of their land.

During the time the Government occupied the property in question under a leasehold interest prior to its taking a fee simple title to the land on August 25, 1955, it made and erected thereon certain improvements referred to variously, but which I shall refer to as the Van Tassell Housing project. These improvements, including buildings, sidewalks, streets, curb and gutters, sewer and water lines thereon, are not to be considered in fixing just compensation to the owner. Any enhanced value of the land due to the value of these improvements upon it must be excluded as an element of compensation, and for the purposes of this case the land must be considered and valued in its naked or unimproved state.

424] Now before I proceed further to the vital elements of this case, let me mention certain related matters which the law already has determined or upon which the parties have agreed, so that they can be eliminated at the outset from your consideration. The right of the Government to take the property is not in question, it having already been determined as a matter of law that the Government had that right, and the fact that the owner may be unwilling to have his land taken is not an element to be considered in fixing compensation. The ownership of the land of John C. Arp and his wife, Mildred K. Arp, is not in question, since it is conceded that the Arps own the complete legal title to the land, as distinguished from the improvements, except for an undivided one-half interest

in mineral rights, and except for the former claims of the city for streets, and except for the claim by the county for taxes. There has been no evidence that the mineral rights of the land have any value, and indeed it has been indicated affirmatively in the evidence that the right was only of nominal value. By nominal value it means actually no substantial value at all, but a nominal sum, such as a dollar, being placed upon it, so that nominal valuation could be said to exist. And therefore, as to the mineral rights outstanding in the Children's Hospital Association, the Court itself will make the allowance of that nominal amount and that is no concern of yours, nor has there been any evidence as to the value of the streets as distinguished from the title of the Arps, and in fact the city has filed a disclaimer in this case acknowledging that it claims no interest in any award to be made and therefore the Arps would be entitled to full value of their property without reference to any claim to streets, that is, any claim to the streets on the part of the city.

425] The claim of the county is not before you and will be dealt with out of the award made by you to the Arps, if that claim be deemed proper.

In summary, therefore, you will fix just compensation for the Arps on the basis that they are for all practical purposes, purposes of this case, complete owners of the land, not including, however, the improvements as I have already mentioned.

Now the evidence does not disclose that this land was necessary to the use of other tracts outside of it, and therefore we are not concerned with the problem of possible damage to tracts outside by the instant taking, so that any question of separation is not involved. You also do not have to concern yourselves with the problem of interest on the amount to be awarded in this case, or on the question of costs or expenses of the suit connected with it. These matters are of no concern, since the Court or the law itself will determine them. Therefore you will see that the sole question or issue for your determination is the just compensation for the land without improvements as of the date of the taking, that is, on August 25, 1955.

426] When I mentioned the land hereafter, it should be understood, so that I don't have to keep repeating "without improvements" that I am referring to the land in its unimproved state and without reference to the improvements placed upon it by the Government, and I am referring to it, unless I otherwise indicate, as of August 25, 1955. And when I refer to the defendants, if I should use that term in general from here on, you will understand that these other defendants have been eliminated for all practical purposes, and I am referring to Mr. and Mrs. Arp, two of the defendants named herein.

Now just compensation is measured by the fair market value of the land at the time of taking. By fair market value is meant the price in money or its equivalent which would be paid by a willing buyer who is not compelled to buy, from an owner who wants to sell but is not compelled to sell, a reasonable time being allowed for negotiations. In other words, you have to consider what this hypothetical buyer willing to buy but not being compelled to buy would obtain from a willing -- I should say willing seller -- would obtain in money or its equivalent from a buyer who was willing but not compelled to buy, considering that a reasonable time would be allowed to work out the transaction.

Now when fixing the fair market value, you are instructed that the highest and most profitable use for which the property is adapted and needed or likely to be needed in the near future as of the time of taking is to be considered
427] to the full extent that the prospective demand for such use would affect the fair market value of the land at the time in question. And by that, you see, it means that considering all of the facts and circumstances as shown by the evidence which would be in the minds of this willing buyer and this willing seller -- the lands should be priced for the purpose of its highest and best use insofar as disclosed by the evidence to the extent that such highest and best use would be calculated to be a consideration by a willing seller and a willing purchaser in arriving at a deal. Now that does not mean that you can say that sometime in the distant future the land may be used for a particular use, if its adaptability for the use wouldn't reasonably be in the mind

of this willing buyer and this willing seller as of the time of the taking. But if the land be adapted for more than one use as of the time of the taking, and by reason of the wants existing in the community or likely to exist in the near future, that adaptability for this higher use would be a consideration which would be taken into consideration by such a hypothetical willing purchaser and willing buyer at that time. Then of course the highest and best use should enter in and must enter in, in determining what would be the fair market value.

While the availability of the property for its highest and best use should be considered as indicated, remote or speculative or unlikely uses should not be considered, but only such uses as could reasonably be expected to affect the value of the land in the mind of such informed purchasers at the time in question, August 25, 1955.

428] The owner is not entitled to compensation for possible loss of any future gain he might have hoped to realize over and above the fair market value of the land, but he is entitled to the fair market value of the land, taking into consideration as of the time in question all of its uses, including its highest and best use, which existed or were likely to exist and be in the minds of informed purchasers at that time.

The value of property is not necessarily determined by the value of the property to the Government which condemns it, or by the future use which the Government may intend to make of it, but I reiterate it relates right back to the proposition that as of the time, August 25, 1955, taking into consideration all of the facts and circumstances as shown by the evidence the owner was entitled to the fair market value of the property as I have defined it to you. The question, as indicated, is if the defendants had desired to sell the property, what could they have obtained in cash or its equivalent on the open market on August 25, 1955, being allowed a reasonable time to find the purchaser who was buying with knowledge of all the uses and purposes, including its highest and best use, to which the property was adaptable, including its highest and best use, as I have mentioned.

429] The law has no exact formula by which that amount can be ascertained and much must be left to the sound judgment and common sense of a conscientious Jury acting in accordance with the principles I am giving you and providing that the exercise of that judgment takes into consideration all of the facts and circumstances in evidence which people who are buying and selling lands would have taken into consideration in negotiations for the sale of such lands to the extent such circumstances are shown by the evidence, both facts and circumstances which would tend to bear down the price and facts and circumstances which would tend to stimulate the price.

Good faith sales of other properties made within a reasonable time either before or after taking the property involved insofar as shown by the evidence may be considered in determining the fair market value of the property in question to the extent that such sales, if any, are comparable and were between willing buyers and sellers so as to be indicative or to throw light upon the fair market value of the property in question as of August 25, 1955.

And so we come into the realm, in our thinking now, of this so-called comparability, and in determining whether properties are comparable so as to throw light upon or indicate the fair purchase price of other properties, you may take into consideration the character and locality of the land involved, the time, whether the time of sale is close to the time in question or far removed from
430] the time in question, whether the sale was fairly and freely made for cash or its equivalent by the buyers who did not have to buy but were able to buy and sellers who did not have to sell but were willing and able to sell, the buyer being willing and able to buy. And of course comparability depends a great deal upon varying circumstances in the way of those differences, if any, which you must consider in determining the weight to be given other sales of allegedly comparable lands at or near the time of the sale in question.

Now in addition to such evidence going to the point of comparability and price other land has been sold for, there has been received so-called expert or opinion testimony. You have observed in your experience as jurors that

ordinarily witnesses are required to testify as to facts within their knowledge, but an exception to that is made which involves not concrete facts as we generally understand them, but the expression of an opinion is made in the case of those persons who were peculiarly situated by reason of ownership of the land or training and experience and other qualifications, to express an opinion as to value and hence the testimony of an expert witness or the owner as to value is entitled to weight to the extent that it is based upon ownership and knowledge or upon experience, education, background, study and investigation of the
431] witness in the light of reasons for such opinion as may be shown by the evidence. In determining the weight to be given to testimony of these witnesses or their opinions, you may weigh all of these factors with all other facts covering the weight to be given to the testimony of the witnesses in general, to which I will return in just a minute. If you believe that the opinion of any expert or opinion witness was expressed without knowledge or investigation or information or upon the basis of assumed facts which were erroneous, or if you believe that the reasons advanced by a witness were unsound, you may disregard his opinion or you may give it such weight as in your judgment you think it merits, after considering all of the evidence before you. Various theories or ways of arriving at or fixing market values are advanced by some of the expert witnesses in the testimony. None of these are binding on you, except insofar as they are in accord with your own observation, your own experience, common sense and the other evidence which you have heard. It is for you -- with reference to opinion or expert testimony, as in the case of all other testimony, expert or otherwise -- to determine the weight to be attached to it and in the light of the rules of law which I am giving you and will give you to determine where the ultimate truth lies.

Now as a part of the cross-examination of Mr. Arp I
432] permitted an answer as to the purchase price which he paid for a larger tract, including the land in question, in the latter part of 1952, and I add by way of comment that this evidence was not received to show the value of the land as of August 25, 1955, but was received as a source factor for your consideration in weighing Mr. Arp's testimony and the testimony which referred to it; and I may add by

way of comment that evidence as to the purchase price of the larger tract of land in 1952 can be so far removed from the date with which we are concerned in fixing just compensation and by reason of the different conditions shown by the evidence to have arisen between that date and August 25, 1955, in the Court's opinion throws little light upon the problem you have. You have before you the more pertinent testimony as to the various experts and sales which are more closely related. Merely because an owner has made an advantageous deal in originally acquiring property is no reason why he should not, as of a later time when the land is actually taken by the Government, receive its full fair market value, notwithstanding that such fair market value may be greatly in excess of the amount for which he acquired the property. And I reiterate that the question before you is not what the property may have sold for or might be worth at a different time, but what its fair market value was as of August 25, 1955.

The burden of proof is upon the defendant to establish
433] the value of the property taken by a preponderance of the evidence. By a preponderance of the evidence is meant that evidence which, when weighed and considered in comparison with that which is opposed to it, is more convincing to the mind and more satisfactory as to its truth. This does not mean that the defendants must prove by a preponderance of the evidence that the land is worth any specific amount before they would be entitled to have judgment in their favor, because in any event the judgment must be in favor of the defendants, the only question being as to the amount the judgment should be. What is meant is that the burden is upon the defendants to show by a greater weight or preponderance of the evidence that such amount as you may have under consideration for an award is the fair market value of the land as of the time stated so that when you determine the amount to insert in your verdict you can believe and do believe that that amount represents what the preponderance or greater weight of the evidence shows was the fair market value of the property on August 25, 1955.

You must weigh and consider this case without regard to sympathy, prejudice or bias for or against any party to the action. Both the plaintiff and defendant are entitled

to the same fair and unbiased and impartial treatment at your hands and you must not permit the fact that the plaintiff is the United States of America or that the defendants are individual citizens or the fact that the property of the defendants is acquired for public
434] purposes to interfere in any way with your independent and fair determination of the fair market value of the property at the time of the taking. Fair market value, or in other words, just compensation means compensation under the rules of law that I have given you, that is, just in regard to the Government as well as to the individual owner. It would be unjust to the public that the United States should be required to pay the defendants more than the fair market value of the land at the time of taking. On the other hand it would be unjust to the defendants if they were awarded less than the fair market value of the land at the time of taking. I am confident that you will see to it that your verdict reflects that impartial view.

You are the sole judges of the facts proved, of the credibility of the witnesses, of the weight and effect of the evidence and of the inferences to be drawn therefrom, and in determining these matters you are to exercise your best justment based upon your common sense and your experiences in life and upon the evidence. You may take into consideration the conduct and manner of the witnesses while testifying before you, their intelligence, their means of observation and opportunities to know and their capacity to remember and to state the facts to which they testify, their interest or lack of interest, if any has been shown, in the result of the trial, their prejudice or bias, if any has been shown, and the probability or improbability of the truth or accuracy of their statements in view of all of the other evidence. You are not bound to believe all that any witness may have testified to, nor are you bound to believe any witness. You may believe one witness as against many or you may believe many witnesses as against one. It is your
435] duty in case of conflict in the evidence to reconcile or harmonize such conflict to the extent that you can do so, but it is still for you to determine for yourselfs where the ultimate truth of the case lies. It is your duty to consider the evidence altogether fairly, impartially, conscientiously and without prejudice of any kind. You should arrive at your verdict solely upon the evidence introduced

before you upon the trial. While I have permitted an inspection of the premises, that inspection is not evidence. It was afforded you so that you could understand the evidence better. You should not consider nor be influenced by any evidence offered which was not admitted by the Court, nor are you to speculate on reasons why evidence was objected to, if it were. Counsel have a duty on both sides to make their record and to advise the Court of legal objections so that the law can be determined and those matters are of no concern to the Jury. You are not to consider any evidence which was not received by the Court, or after being received, was ordered stricken out, but you may examine the evidence in the light of the continued positions of the parties as reflected in the argument. What the attorneys say in argument is not evidence, but it is very helpful in cases such as this case, having
436] been ably argued, for the Jury to weigh the respective arguments and examine the evidence in the light of them. It is still the duty of the Jury to determine the case on the evidence.

Where counsel have stipulated as to a given fact -- there was one case of that -- a statement of it being admitted as an exhibit, of course then that is to be taken as the fact. You should not be influenced by nor should you consider any rumors or expressions of opinion or statements which you may have heard or read out of Court, nor by the fact, if you believe it to be a fact, that a public sentiment exists in favor of or against either party. Those are wholly collateral matters and it is your duty to disregard them.

Now while I have commented in a way on one or two phases of the evidence, I want to emphasize that I have neither attempted nor have I indicated to you, ladies and gentlemen, how I would decide this case, did I have that responsibility of returning a verdict for the amount of just compensation. I am leaving that responsibility squarely to you, and notwithstanding what I have indicated as to the law or by way of comment, I emphasize that it is your responsibility to determine, in the light of the rules of law that I have given you what is the amount of just compensation to which the defendants are entitled for the taking of the property by the Government.

437] These instructions are to be considered and construed together as a whole. Each instruction should be understood with reference to and as a part of the entire charge, because manifestly I can't instruct you in a single instruction all at one time.

When you retire to your Jury Room you will select a member of the Jury as a foreman. Your verdict, as you know, must be unanimous and when you have reached a unanimous verdict notify the Marshal. The parties, counsel, the Court, will be assembled and you will be conducted back from the Jury Room as rapidly as possible.

I will have handed to you a form of verdict. It simply reads: "We, the Jury duly empanelled in the above entitled cause do find that the just compensation to be paid to the defendants, John C. Arp and Mildred K. Arp, for the taking of the land described in the complaint for condemnation is (blank) dollars." You will fill in the amount that you agree upon as your verdict for just compensation, your foreman will sign the verdict and it will be returned into Court upon notification of the Marshal.

Will counsel please come to the bench?

(At Bench:)

438] Mr. Hickey: We have no further objection to any instruction given by the Court.

The Court: You may take your exception.

Mr. Raper: I have none, sir.

The Court: Very well. Gentlemen, in fairness the record may now show that objections or exceptions taken in chambers may be deemed to be made now to the extent applicable to the Court's actual charge.

Mr. Hickey: Thank you, sir.

(To Jury:)

The Court: Miss Allison, you may swear the Marshal.

(The Bailiff was sworn.)

The Court: Now I am going to ask counsel to help me by carefully checking over the exhibits which have been received so that we will only get those that have actually been received and see that those are the only ones that go to the Jury Room. We will stand in recess now awaiting the verdict of the Jury.

(The Jury retired and the Court stood in recess.)

Filed Sept. 13, 1956.

[Defendants' exhibits B, C, D and E are aerial photographs. Three copies of the exhibits have been filed.]

Copy

Defendants' Exhibit F.

Agreement

This Agreement, Made this 27th day of May, 1954, by and between John C. Arp and Mildred K. Arp, of the County of Laramie and State of Wyoming, hereinafter referred to as "Sellers", and Gayle Dellinger, of the County of El Paso and State Of Colorado, hereinafter referred to as "Purchaser"; Witnesseth:

For and in consideration of the mutual promises hereinbelow set forth, and of other good and valuable considerations, the receipt and adequacy of which is hereby acknowledged, Sellers agree to give this option to Purchaser, and Purchaser agrees to buy from Sellers, upon the terms and conditions hereinbelow set forth, that real property situated in Laramie County, State of Wyoming, and described as follows: Approximately 40 acres of land, more or less more fulley described as Blocks 28, 29, 30, 31, 34, 35, 36, and 37, in Interior Heights Addition to the City of Cheyenne, County of Laramie and State of Wyoming.

Terms And Conditions:

1. Purchase Price. The total purchase price is the sum

of Eighty Thousand ($80,000.00) Dollars, payable as follows:

(a) $2,000.00 upon the execution of this agreement, the receipt of which is hereby acknowledged;

(b) $10,000.00 on or before July 1, 1954; and

(c) The balance on or before three (3) years from date. None of the deferred payments shall carry any interest until after three years from date when they will carry six (6%) per cent per annum payable semi-annually.

2. Development. It is mutually agreed that Purchaser shall be entitled to possession of the entire premises during the pendency of this agreement, regardless of whether or not all or any of the premises have been conveyed to Purchaser pursuant to the terms of this agreement. Provided further that purchaser will not have the right to sell any of said property to which he has not received warranty deeds. It is mutually agreed that Purchaser shall be entitled to install such utility facilities upon the premises regardless of whether the same have theretofore been conveyed pursuant to the terms of this agreement as shall be necessary to said development; Provided, however, that Purchaser agrees to indemnify and save Sellers harmless from all liability, lien and assessment, on account of the expense of installation of said utility facilities and on account of the maintenance thereof during the pendency of this agreement and, provided further, that if the Purchaser shall fail to purchase all of these premises in accordance with the terms of this agreement, all such utility facilities situate upon such portion of the premises as shall not theretofore have been conveyed to Purchaser shall become the sole and separate property of Sellers, free and clear of all right, title, interest and claim of Purchaser.

3. Conveyance. Conveyance of marketable title shall be by Warranty Deed, free and clear of all liens and encumbrances, except taxes for the year 1954. Purchaser shall be entitled to conveyances from time to time upon written request, accompanied by the requisite purchase price. Each of such requests for conveyance shall relate to one or more of said blocks and shall be contiguous to land theretofore conveyed to Purchaser pursuant to the terms of this paragraph. The $2,000.00

hereinbefore receipted for shall be held by the Sellers and applied to the last payment due to be made under the terms of this agreement, and shall be liquidated damages in case purchaser defaults on this contract.

4. Abstract Of Title. Sellers agree to furnish to Purchaser, within twenty days from date, an abstract of title certified to date, evidencing good and marketable title in Sellers, free and clear of all liens and encumbrances, and including any assessments and special improvements taxes. If an examination shall disclose any defect of title, Sellers shall be granted a reasonable time in which to correct same.

5. Taxes. Taxes for the year 1954 shall be pro rated to the date of closing. Taxes for the year 1954, subject to such pro ration, and for subsequent years during the pendency of this agreement, shall be the sole and separate obligation of Purchaser.

6. Miscellaneous. The parties agree that time is of the ess ce of this agreement and that this agreement shall bind and inure to the benefit of the personal representatives, successors and assigns of the parties. The Purchaser covenants and agrees to indemnify and save Sellers harmless from all damages and liability on account of personal injury and property damage which might result from Purchaser's occupancy of the premises and from liens for labor, materials and others. In the event Purchaser shall fail to make the payments provided for herein, or further violates the terms of this agreement, it is mutually agreed that Purchaser shall retain such portions of the premises to which he has taken title prior to the date of such default and Sellers shall retain and accept the initial payment of $2,000.00 hereinabove specified to be made upon the execution of this agreement, as liquidated damages and both parties shall thereupon be fully released from all obligations contained herein.

In Witness Whereof, this agreement has been executed in duplicate originals the day and year first above written.

John C. Arp
Mildred K. Arp
Sellers
Gayle Dellinger
Purchaser

Arp vs. United States of America

Copy

Defendants' Exhibit G.

Agreement

This Agreement, Made this 19th day of October, A. D., 1954, by and between John C. Arp and Mildred K. Arp, of the County of Laramie and State of Wyoming, hereinafter referred to as "Sellers", and Gayle Dellinger, of the County of El Paso and State of Colorado, hereinafter referred to as "Purchaser"; Witnesseth:

Whereas, the parties hereto, under date of 27th of May, 1954, entered into a contract for the sale and purchase of certain property in Interior Heights Addition to the City of Cheyenne, County of Laramie and State of Wyoming; and

Whereas, it is now their desire to amend and extend such contract;

Now, Therefore, in consideration of the mutual promises contained herein, and other good and valuable considerations, the receipt and adequacy of which is hereby acknowledged, it is agreed as follows:

1. It is mutually agreed that the original contract shall be amended so that the description of the property to be sold and bought shall include: The East one-half of Block 11, and all of Blocks 12, 13, 14, 56, 57, 58, 59, 62, 63, 64, 65, and 66, in Interior Heights Addition to the City of Cheyenne, County of Laramie and State of Wyoming.

2. It is mutually agreed that the price to be paid for the above described property shall be $250.00 per lot.

3. The $2,000.00 earnest money receipted for in the original contract shall be applied to the purchase of the last lots to be purchased in the East one-half of Block 11 and all of Blocks 12, 13 and 14.

4. In all other respects the original agreement shall apply.

5. This agreement shall inure to the benefit of and bind the heirs, administrators, executors and assigns of the

parties hereto.

In Witness Whereof, this agreement has been executed in duplicate originals the day and year first above written.

John C. Arp
Mildred K. Arp
Sellers
Gayle Dellinger
Purchaser

140] Clerk's Certificate.

United States of America, District Of Wyoming, SS.

I, Capitola G. Allison, Clerk of the United States District Court for the District of Wyoming, do hereby certify that the above and foregoing papers and proceedings, attached to this Certificate, are the original papers and proceedings contained in the record in said Court in Case No. 2901 Civil, United States of America, Petitioner for Condemnation, vs. Certain Parcels of Land in the City of Cheyenne, Laramie County, State of Wyoming, John C. Arp and Mildred K. Arp, et al., Defendants, as follows:

Petition for Condemnation, filed on October 21, 1943. Declaration of Taking, filed on October 21, 1943. Supplemental Declaration of Taking, filed on December 22, 1943. Judgment on Declaration of Taking and on Supplemental Declaration of Taking, entered and filed on December 22, 1943. Stipulation, filed on January 24, 1944. Order Amending Petition, entered and filed on January 24, 1944. Stipulation, filed on November 28,1945. Order awarding and fixing Just Compensation, entered and filed on November 28, 1945. Notice to Renew Exclusive Use of Property for One Year, filed on December 11, 1951. Order Directing Clerk to Issue Registry Checks, entered and filed on December 11, 1951. Notice to Renew Exclusive Use of Property for One Year, filed on December 8, 1952. Order Directing Clerk to Issue Registry Checks, entered and filed on December 23, 1952. Notice to Renew Exclusive Use of Property For One Year, filed on November 30, 1954. Motion to Terminate Condemnation Proceedings and Request for Appraisal of Lands, filed on May 6, 1955: Declaration of Taking, filed

on August 25, 1955. Complaint for Condemnation, filed on August 25, 1955. Separate Answer of Defendants John C. Arp and Mildred K. Arp, filed on September 14, 1955. Motion to Strike, filed on October 11, 1955. Order Sustaining Plaintiff's Motion to Strike, entered and filed on October 28, 1955. Amended Separate Answer of Defendants John C. Arp and Mildred K. Arp, filed on December 12, 1955. Motion to strike from Amended Answer of Defendants John C. Arp and Mildred K. Arp, filed on February 1, 1956. Motion for leave to file Supplemental Separate Answer of the Defendants John C. Arp and Mildred K. Arp, filed on February 29, 1956. Plaintiff's Objections to the Granting of the Motion for Leave to File Supplemental Separate Answer of Defendants John C. Arp and Mildred K. Arp, filed on March 12, 1956. Memorandum Decision, filed on May 9, 1956. Order Ruling on Motions, entered and filed on May 14, 1956. Instructions Requested by Defendants, filed on July 13, 1956. Government's Proposed Instructions, filed on July 13, 1956. Verdict, returned and filed on July 13, 1956. Judgment, entered and filed on July 25, 1956. Motion for New Trial, filed on August 3, 1956. Order Overruling Motion for New Trial, entered and filed on August 20, 1956. Notice of Appeal, filed on October 18, 1956. Appeal Bond, filed on October 18, 1956. Statement of Points on Appeal, filed on October 19, 1956. Designation of Contents of Record on Appeal, filed on October 19, 1956. Cross-Designation of Contents of Record on Appeal, filed on October 29, 1956.

I further certify that there accompany said original record the Reporter's Transcript, in two volumes, of the trial proceedings held commencing on July 10, 1956, and Defendants' Exhibits B to K, inclusive, and Plaintiff's Exhibits Nos. 1 to 9, inclusive, in said cause.

I further certify that said original record, transcript and exhibits are transmitted to the United States Court of Appeals for the Tenth Circuit pursuant to the Notice of Appeal and Designation of Contents of Record on Appeal filed in the above entitled cause by appellants, John C. Arp and Mildred K. Arp, and to the Cross-Designation of Contents of Record on Appeal filed by the appellee, United States of America.

Witness my hand and the seal of said Court on the 10th day of November, A. D. 1956, at Cheyenne, Wyoming.

(Seal)

Capitola G. Allison
Clerk of the U.S. District Court
for the District of Wyoming.

Filed United States Court of Appeals Tenth Circuit November 27, 1956, Robert B. Cartwright, Clerk.